

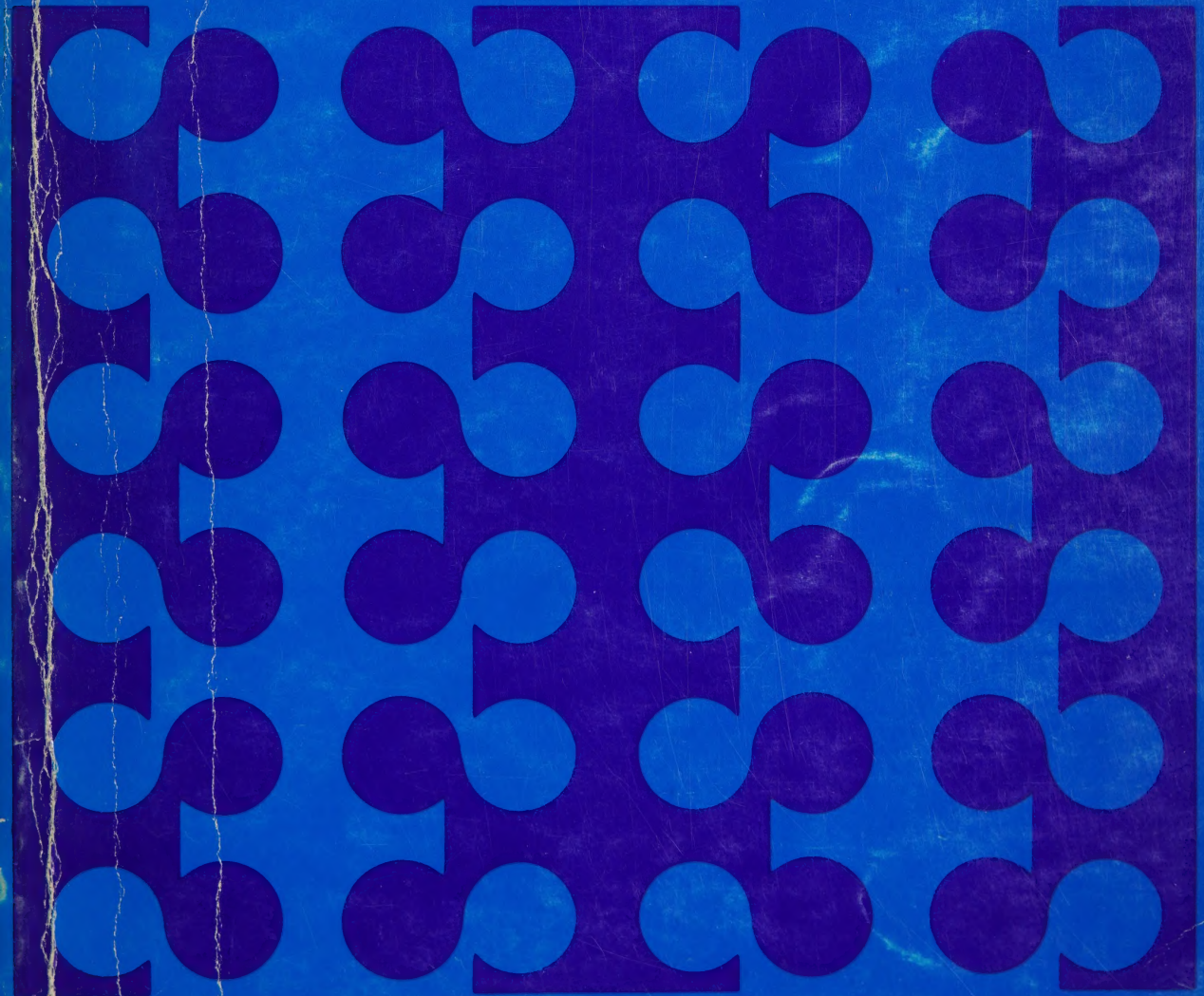
LEGAL EDUCATION IN ONTARIO, 1970

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880 Bay Street,
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Price \$4.00

Published by
the Queen's Printer,
W. Kinmond, Toronto
1972

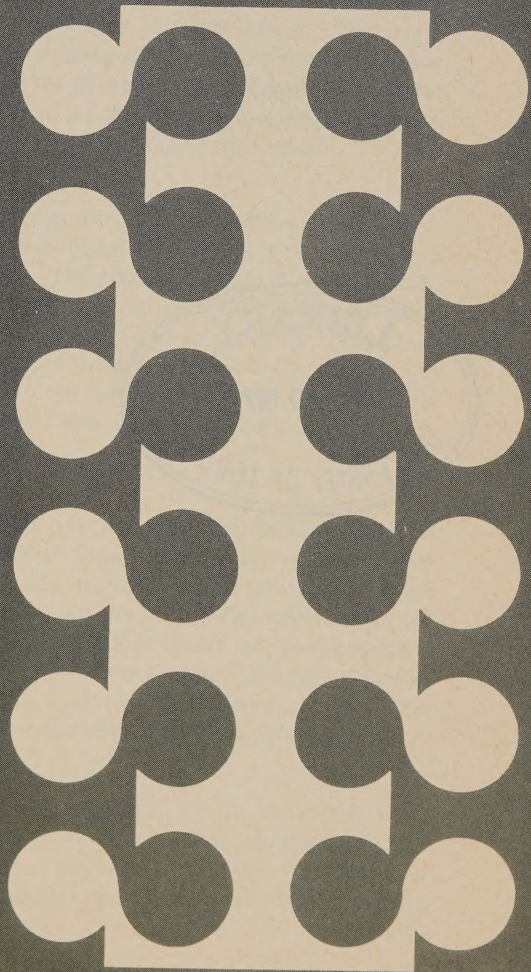
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LEGAL EDUCATION IN ONTARIO, 1970

A Study Prepared for the Commission
on Post-Secondary Education in Ontario



Ont. Commission on
Post-Secondary Education
in Ont.

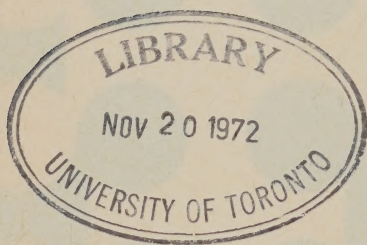
Report and studies

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Legal Education in Ontario 1970

Editorial Foreword

The education of "professionals" has been, and continues to be, a major function of traditional post-secondary education. It became apparent early in the Commission's work that several critical issues arising from its terms of reference would have to do with this function: what kinds of professional education would be needed, and what numbers of professional workers would be required; what kinds of institutions should provide professional education; what part should practical work experience have in professional education; what costs and what benefits would be associated with these programs, and what use would be made of educational attainments in the certification and licensing of professionals?¹ Fortunately much work was already in progress on the subject of professional education when the Commission set about its task of considering these issues. In particular, studies were underway on engineering education,² and medical education.³ The Commission consequently limited its own investigations to the study of legal education in Ontario, the results of which are published in the present volume, and to a more general background study of the professions which will be published separately.⁴ Some further aspects of the topic are also treated in the Commission's background study entitled "Certification and Post-Secondary Education".

The present study on legal education surveys a number of general issues relating to legal education; its sociological, cultural and political aspects; and also reports on a large amount of original research relating to the economic aspects of post-LL.B. programs and to relevant professional assessments of the effectiveness of such programs. This empirical evidence is effectively analyzed to yield the conclusions set out in Chapter VIII which, in turn, support the practical policy suggestions of Chapter IX. A comprehensive short review of the study's design and major findings may be found in Chapter I, "The Issues of Legal Education," and the two concluding chapters referred to above.

The material in Chapter III on the economics of post-LL.B. legal education should be read in the context of the Commission's other papers dealing with the economics and financing of post-secondary education. The techniques and limitations of the type of analysis employed are considered in detail in *The Economics of Post-Secondary Education*, and in the *Cost and Benefit Study of Post-Secondary Education in Ontario*. The more general context of other aspects of legal education explored in this study is outlined in the Commission's studies, *Professional Education: A Policy Option*, and *Certification and Post-Secondary Education*.

The *Study of Legal Education in Ontario* was prepared for the Commission by Andrew Roman and Associates, consultants in marketing analysis and planning. The principal researcher, Mr. Andrew Roman, is a graduate of McGill University and Osgoode Hall Law School, and has specialized in research related to business and public decision-making.

The study was submitted to the Commission November 30, 1970. The opinions and conclusions contained in the study are solely those of the authors and publication of this study does not necessarily mean that all of the opinions and conclusions contained therein are endorsed by the Commission.

- 1 See *Post-Secondary Education in Ontario: A Statement of Issues*, pp. 5-6.
- 2 *Ring of Iron: A Study of Engineering Education in Ontario*, a report prepared by P. A. Lapp for the Committee of Presidents of Universities of Ontario, December 1970.
- 3 Report of the Task Force on Future Arrangements for Health Education to the Ontario Council of Health.
- 4 "Professional Education: A Policy Option", a study prepared for the Commission on Post-Secondary Education by Applied Research Associates, September, 1971.

A STUDY OF
LEGAL EDUCATION IN ONTARIO, 1970

(With particular emphasis on
the post-LL.B. period)

PREPARED FOR:

THE COMMISSION ON POST-
SECONDARY EDUCATION IN ONTARIO

BY

ANDREW ROMAN & ASSOCIATES,

November 30, 1970

PREFACE

This report could not have been prepared without the generous assistance, over several months, of many people. I should particularly thank Mr. Murray Philp of AIM Limited for his untiring help in all phases of the study.

The following have been kind enough to help me in the collection and analysis of the raw data: Mr. Kenneth Jarvis, Q.C., Secretary of the Law Society of Upper Canada, Mrs. Rachel Knox, Mr. R.J.Roberts, Q.C., and Mr. James C. MacDonald, Barrister, of the Bar Admission Course; the Deans of the six law schools in Ontario; Associate Deans and numerous professors, students and practitioners who consented to lengthy interviews or took the time to fill out detailed questionnaires; Professor David Stager of the Institute for the Quantitative Analysis of Social and Economic Policy, University of Toronto, for invaluable help in the cost/benefit portion of the study.

I am grateful to Dr. B. Kymlicka, Miss Lindsay Niemann and the other staff members of the Commission on Post-Secondary Education in Ontario for their continued encouragement and assistance.

Andrew J. Roman,

November 30, 1970.

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 John N. Turner
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I. Some Issues in Legal Education

As a precondition to conducting any research, the researcher must decide what the key issues are in the area he wishes to study, to formulate the hypotheses he intends to confirm or dispel. Only then is he free to devise techniques for obtaining specific data which will throw light on these issues. Failure to operate this way can result in the collection of much useless data, and simultaneously, in the inability to provide complete answers to many of the issues raised by an ex post facto analysis of the figures.

The collection and analysis of information, while requiring careful attention to the best of modern research techniques, is relatively easy in comparison to the prior formulation of issues and the subsequent matching of the study results with these issues. Although the individual survey questions can be worded so as to avoid inducing bias on the part of the respondents, (e.g. "Do you think articling is: too short, just right, too long?" does not induce bias), the very fact that certain questions are chosen to be asked and others are not (e.g. "Do you think the Government of Ontario should subsidize articling?" was not asked) implies that some questions are more important to have answered than others (i.e. in this example, the length of the process, rather than government financing). It is clear that the selection of some

questions or issues, at the expense of others, involves a conscious choice on the part of the researcher as to the importance or relevance of these. As there are no absolute or "objective" standards for determining importance, it is always--like beauty--to some extent in the eye of the beholder. In this sense, all research is "biased"; other researchers might have chosen different issues to study. With this general caveat, the writer will outline those issues which to him appear most important in the field of legal education.

1. In an era of continued rapid change in substantive law, the most important function of legal education is not the teaching of legal rules, but rather:

(a) teaching methods of legal research and analysis (where to find the law, and how to understand it, once found);

(b) improving techniques of writing and speaking, particularly about legal matters;

(c) conveying responsible attitudes about the legal profession and the lawyer's role in modern society (socialization).¹

Items (a) and (b) are indisputably the job of the law schools--the possible controversy is about item (c). As

¹Socialization is defined as: to adjust or make fit for co-operative group living.

attitudes are communicated subtly during the entire process of legal education, the schools, the profession (during articling) and the Law Society (during the Bar Admission Course) all have a turn at controlling the students' value-formation processes. Such diverse groups do not by any means communicate the same values to the students (see Chapters V and VI). Therefore, one important issue is: who shall control the socialization of law students, and to what extent?

2. Most law students graduating from law school have had little or no practical legal experience, and therefore may not be able to perform immediately all those tasks which a licensed lawyer is entitled to do. Unlike medical doctors, however, very little of the work lawyers do is of an emergency, life-or-death nature. The LL.B. graduate could probably be trusted, in most cases, to obtain the practical experience by teaching himself, with little real danger to the public (although the neophyte would probably be somewhat slower and less efficient at the beginning). But there are some very serious matters which could inadvertently be entrusted to a new graduate (e.g. a murder or rape trial in the Supreme Court), which he would probably not be qualified to handle, and where, by the nature of the case, the "learn-as-you-do-it" process would be too dangerous for the client. The issue is: what is the most efficient manner

in which the LL.B. graduate can be brought to the minimum requisite standard of practical competence for lawyers, consistent with the protection of the public and the social utilization of the level of skills the LL.B. graduate has already attained?

An important corollary of this, of relevance to all forms of professional education, is: in what manner can the academic and practical aspects of that profession's training be most effectively integrated?

3. A major goal of all professions is the continual elevation of professional standards. As education contributes to this, pressures will always exist for the lengthening of the training process, prior to qualification for practice. At least in theory, each additional year will add some increment to the skills of the professional, so there is no upward limit to the number of years of training which an ambitious, self-regulating profession could require of its entrants. Obviously some practical limit must be imposed, some compromise reached. In Ontario it is widely felt that the total legal education process is too long. The issue can be formulated as: In how many years, and with which curriculum can the optimum balance be achieved between:

a) The profession's and the public's demand for excellence;

- b) The public and private cost of this training;
- c) The Students' demands to be admitted to practice without excessive expenditures of their money and time;
- d) The minimum essential pre-licensing training, and opportunities for continuing legal education after admission to practice.

4. Underlying issues 2 and 3 is the whole question of whether, as many lawyers are now specializing almost immediately upon graduation (see Chapter IV), the purpose is still to train only legal generalists. This raises problems of definition, training and accreditation. The issue, in the context of legal education, is: Must all lawyers be required to complete all courses given to every other lawyer at the LL.B. level and at the post-LL.B. level?

5. One can divide legal practitioners in Ontario into two geographic groups: Toronto, and Balance of Ontario. There are certain long-run economic and cultural pressures inducing lawyers to come to Toronto, and it has been suggested that the Balance of Ontario now has too many vacant legal practices. The issue is: Does the legal education process as presently constituted aggravate the trends leading to legal under-servicing outside of the Toronto area?

6. Through the articling period and the Bar Admission Course teaching period, legal education also fulfills the key personnel functions of employee recruitment and placement. Thus the Bar Admission Course functions as a conduit between the student and the present marketplace for his services. As the legal profession in many places is still fairly small and tightly knit, the "grapevine" discussions about particular students may be quite efficient. The student is in a doubly-dependent position vis-à-vis his principal or Bar Ad Instructor--pupil, and potential employee. The issue is: What does the dual dependence of the law student upon his principal or Bar Ad Instructor do, in comparison with students in other professions, to the law students':

- a) Ability to put effective pressure on the profession or on the Bar Admission Course, to obtain a meaningful share of the control over his education.
- b) Ability to obtain improvements in Course curricula and teaching methods, or in articling salaries and working conditions.
- c) Opportunities to broaden the profession's "market", to find satisfying work performing legal services of kinds, or for a clientele other than those for which his principal or instructors have been retained.

7. The nature and quality of all decision-making is very much affected by the manner in which the decisions are made, and the characteristics of the decision-making individuals or groups. The core issue underlying all the above issues, therefore, is: In what manner, and by whom shall decisions about legal education be made?

These are seen as being the primary issues facing legal education in Ontario today (although undoubtedly there are others), and are the focus of this study. The attempt was made, within the time and budget available, to collect as much relevant information as possible. Each of these issues is referred to in the Conclusions (Chapter VIII), although more and better data was collected in relation to some issues than others. This is reflected in the degree of certainty with which the Conclusions are presented. Where the Conclusions strongly indicate something different from the present system, specific Recommendations (Chapter IX) are offered as to how the changes might be brought about.

II. The Context of Legal Education - Background

The Lawyer and Social Values

During a period of rapid social evolution (such as presently), one of the most important functions of law is to adjust and resolve the inevitable conflicts generated by the interaction of individuals, groups and the state. Each person, group or interest must have a fair accessibility to the legal processes - legislature, courts and administrative boards - so that their respective viewpoints can be vigorously advocated. As this access is usually obtained through lawyers, to the extent that the legal profession is associated with any particular groups, the interests of such groups will be better and (generally) more successfully represented.

In the past the legal profession has been understandably allied with those groups which comprise the largest market for legal services - house buyers, litigants, manufacturing corporations, insurance companies, and other businesses. But these are only a few of the many groups who need legal advocacy. The quality of our social interaction in the future will be in considerable measure influenced by the extent to which the newly-graduated, as yet uncommitted lawyers become advocates for all the now under-serviced interests. The availability of this new breed of lawyer will be governed by four closely inter-related factors:

1. The ability of the total legal education process to attract, sustain and socialize, in addition to the usual students, entrants from socio-economic groups or psychological inclinations other than those committed or about to be committed to the established market for legal services: business or wealthy private interests.
2. The inclusion, in legal education curricula at all levels, of new course options.
3. The willingness of (usually) newly-graduated lawyers to accept salaries which are probably a fraction of what could be available to them in a commercial practice.
4. The creation of a method of financing the performance of these new services.

The Role of Legal Education

Although numerically a very small percentage of the population, lawyers as a group exercise a grossly disproportionate amount of power, even when compared with other professional and university-educated groups.¹ (For example, the present Prime Minister, the Leader of the Opposition, and several of the Provincial Premiers are lawyers.) The activist nature of the legal profession, the specialized knowledge of the levers of political power, exceptional

¹ A good description of this is found in Professor John Porter's The Vertical Mosaic, 1965.

forensic skills, relative financial independence and solid establishment connections - all combine to make the lawyer class formidably influential in all the power centres of the nation.

However, it must be remembered that the legal education of this mandarin class is financed by the entire community. In view of the great importance of this educational process in determining the group commitment of the graduating lawyer, the government of Ontario ought to take a keen interest in all aspects of legal education. The taxpayers of the province certainly have an interest in seeing that the benefits of this training are as widely distributed as the financial burdens, and that the overall legal education system serves the general community need for the availability of legal practitioners to a broad range of interest groups.

Because of the specialized nature of professional education, the government has understandably delegated authority to the legal professional association, which has in turn passed on some of its control to the law schools. From the foregoing it can be seen that the educational processes created by The Law Society of Upper Canada and by the appropriate faculty councils of the province's law schools, in that they determine the attitudes and group commitments of our graduating lawyers, can have an important long-run effect on the quality of our democracy.

Ontario's Unique Legal Education Process

In order to be admitted to the Bar in Ontario a student must usually:

1. Have an undergraduate degree (or complete two years of undergraduate training), generally with a "B" average, or higher, to gain admission to a law school.
2. Obtain a three-year LL.B. degree from an accredited law school.
3. Complete at least twelve months (in practice, usually fifteen months) of "articles" in a lawyer's office, after the LL.B.
4. Complete successfully a full-time classroom Bar Admission Course "teaching period" taught by practitioners and lasting one academic year (September to February) at Osgoode Hall in Toronto.

The first two stages are almost universal in Canada and the U.S., the third is unusual, the fourth unique. The lengthy articling and unique Bar Admission Course requirements are highly controversial. They have been praised by other law societies as well as our own, and denounced by some students, professors, and graduates as a sham. One fact is undisputed: it takes longer to become a lawyer in Ontario than in any other place in the world.

In the United States articling is virtually unknown, having been discontinued (except in five or six states) many years ago, and there are no Bar Admission Courses of the Ontario type. After the three-year LL.B., the American law student usually writes a Bar Examination, and is admitted to practice. In England, no university degree is required to be admitted to practice, although several years of "articles of clerkship" in a law office are necessary. Some English lawyers do have law degrees, of course, but these are often first university degrees, with no under-graduate degree prerequisite. The Ontario system is a hybrid of the American and English systems, with a Bar Admission Course tacked on at the end.

Today legal education in Ontario is going through a major re-appraisal. The present system was hammered out in 1957 as a compromise between the law schools and the Law Society of Upper Canada, ending many years of feuding over legal education. Articling and the Bar Admission Course have remained unchanged since 1957; however, on March 21, 1969, the Law Society approved the new LL.B. curriculum (consisting of a compulsory set of "core" courses in the First Year, with a free choice of options in the two upper years), in recognition of the growing demand for specialization.² The first class under this curriculum will graduate

²Constitutional Law is a compulsory course which some schools have put into the second year.

and start articling in 1971.

The last five to ten years has seen a great revolution in the law schools of Ontario - admission standards and enrolment have soared, faculty qualifications, teaching methods, specialization, library facilities and course content have all been enormously improved.

Since 1957 there have also been startling changes in the law itself, the legal profession, and law students. The pace of law reform has quickened, so that what a student learns in his first year may be obsolete before he graduates (e.g., the substantial revisions to the Criminal Code, the Business Corporations Act, the Divorce Act, and shortly, the passage into the Income Tax Act of some of the principles in the White Paper on Taxation). The legal profession has seen the growth of the large law firms (several now have more than 30 lawyers, and a few, over 50); coincident with increasing specialization, the decline of the solo-practitioner-firm; and soaring overhead costs (including articling students' salaries) without equivalent fee increases.

Enrolment in law schools (and the number of lawyers being graduated from the Bar Admission Course) has mushroomed. The first Bar Admission Course had some 35 graduates. By 1965 this had grown to about 250, to 459 in 1970, and an estimated 900 by 1973. Two new law schools were opened in

1957 (Ottawa and Queens), one in 1959 (Western), and one in 1968 (Windsor), bringing the province's total to six law schools, which enrolled a total first year class of 1,006 in Fall 1970. While it might be expected that this increase in admissions has led to a decline in standards, exactly the reverse has been the case. Because of the new environment in the law schools, new opportunities for lawyers in fields which did not exist a few years ago (especially in government), and the continuing rapidity of law reform, law is increasingly seen as "where the action is." This has attracted a flood of applicants which, in the last couple of years, has been roughly double the number of available places. At the same time, the quality of the applicants has improved substantially. In the words of one Assistant Dean, "Five years ago we had empty places; not today. The guy who won the gold medal five years ago might not even get in today." The stereotype 3-piece-suited law student Justice Minister Turner once described as "on the conveyor-belt to big business" has virtually disappeared, to be replaced by a much more academically proficient, socially-conscious and critical student. As another Associate Dean described this difference, "Law School is very much a rape of the minds of students. For my generation of law student, the appropriate reaction, when

rape appeared inevitable, was to lie back and enjoy it. Today's law student is much more likely to kick you in the groin--metaphorically speaking, of course."

While the students and the schools have changed enormously in the last decade, the post-LL.B. training has remained static, both in length and content. Articling, for most students, is the same as it was a century ago. With the 22 months' post-LL.B. period, and admission pressures requiring the rejection of those without undergraduate degrees (about 90 per cent of applicants admitted in 1969 had degrees), it now takes longer in Ontario to become a lawyer than it does to become a medical doctor. Under pressure from recent graduates to shorten the total period, the Law Society this year set up a Special Committee to study the problem. The Committee has said that it will conduct extensive research and public hearings, and is not expected to report for at least two years.

The length and arduousness of the legal education process can only be justified if, ceteris paribus, it produces one of the best Bars in the world. This, of course, would be a very difficult subjective assessment--but after twelve years of the present program no one has yet made this claim for Ontario, either as to the Bar in general or for its more recent graduates.

Some Contemporary Trends in Legal Education

Legal education in the Common Law countries is most highly developed in the United States, particularly at a few key law schools, which most U.S. and Canadian LL.B. curricula have sought to emulate. The "new curriculum" in the Ontario law schools is very similar to that found at Harvard, Yale or Berkeley. Essential to an understanding of the contemporary American law school (where most Canadian law professors received their highest law degrees) is the American concept of the meaning of "law," now also being taught in Canadian law schools.

American jurisprudence, before the turn of the century, rejected what is still the dominant English and Canadian lawyers' view of law, although Canadian law schools have recently drifted toward the American concept. The older theory sees law as being a body of substantive legal rules (found in cases and statutes), and procedural rules by which the substantive law may be carried into force. Thus when our law students and practitioners complain that the law schools have stopped teaching "law," they mean that much less emphasis is placed on the learning of numerous legal rules of the form "any person who does action X, will be subject to legal consequence A." As the sheer mass of

statutory and case law makes it impractical for anyone to have a good working knowledge of more than a small segment of the total of legal rules, law schools can no longer aspire to teaching, in three years, all the law that was once considered worth knowing. More importantly, however, the view that law is merely a body of rules to be interpreted according to the precise wording of the statute and by adhering unwaveringly to precedent (which is still the "official" judicial philosophy in all Canadian courts), is increasingly being seen as rigid, literalistic and naive in light of contemporary knowledge in the social sciences.

As early as 1897, Oliver Wendell Holmes, the famous American judge and legal scholar, offered this definition of law: "The prophecies of what the courts will do in fact, and nothing more pretentious, are what I mean by law."³ Another influential position is that of Professor Lon Fuller of Harvard who sees law as an organic "purposeful enterprise, dependent for its success on the energy, insight, intelligence and conscientiousness of those who conduct it,"⁴ this purpose being "that of subjecting human conduct to the guidance and control of general rules."⁵ The consequence of this view is the need to evaluate the degree to which the enterprise attains its goals, to talk

³In "The Path of the Law," 10 Harv. L.R., at p.461. For a good modern discussion of the meaning of law see Lon Fuller, The Morality of Law, 1964.

⁴Fuller, Ibid, p. 145. ⁵Fuller, Ibid, p. 146.

about the extent to which a legal system as a whole achieves the ideal of legality. Thus the question "what ought the law to be" is not a separate, irrelevant, moral speculation, but an integral part of the question "what is the law?"

The result of this changing concept of "law" has been a revolution in law school curricula and teaching methods (in the U.S. since the early part of the century, in Ontario in the last decade). For example, the course in Criminal Law in Ontario law schools might take only a cursory look at the Criminal Code, being more interested in studying the sociology of vagrancy, the psychology of the criminal, or the scope of the prosecutor's discretion--all intended to shed light on what society is attempting to accomplish with criminal law and how well it is succeeding. It is felt that the school's job is to teach the student how to function effectively as a lawyer in a dynamic society; if he is bright enough to be admitted to law school he can always read the legal rules for himself, once he is shown where to find them. Forcing him to learn many legal rules is seen as being about as useful as requiring the student to memorize the telephone directory. As further illustrations, the course in Corporation Law may concern itself with the control of corporate power in the public interest (as well as the provisions of the Business Corporations Act) and the course in Taxation probably evaluates the merits of the

Carter Commission and White Paper proposals in addition to covering the present Income Tax Act. As optional courses for second and third year students, Ontario law schools now offer such exotica as Chinese Law, Citizen Advocacy and Community Organization, Law & Psychiatry, Law & Poverty, Natural Resources, Urban Legal Studies, etc. The 1970-71 Calendar of Osgoode Hall Law School offers more than 70 options, including credits for supervised research, and courses in other faculties of York University.

In spite of the wide range of course options, as yet neither American nor Canadian law schools have any clear conception of the roles their students are being prepared for. In a famous law review article, Professors Lasswell and McDougal wrote in 1943:

If legal education in a contemporary world is adequately to serve the needs of a free and productive commonwealth, it must be conscious, efficient and systematic training for policy-making....

Policy is defined as the making of important decisions which affect the distribution of values.⁶

⁶"Legal Education and Public Policy", 52 Yale Law Journal, p. 203.

In a later article, McDougal criticized the law schools for having a

....confusion inherited from a time when people had no realistic understanding of psychology and personality, of how the human mind works...[left over from] a time when people had minimal insight into group behaviour, social processes and community institutions....when the full role of the lawyer in the community - his impact on policy-advising and policy-making and, hence, on the extent to which a community can achieve its values - was not clearly apparent.⁷

Because of this uncertainty, the law schools have not progressed beyond the pragmatism of "does this law accomplish what it purports to do," to anything but a superficial glance at the agonizing value choices implicit in policy decisions. For example a Tax course may discuss at length whether the concept of a comprehensive tax base requires the inclusion of sickness benefits or capital gains, but may devote little attention to the antecedent value questions of the relative weighting to be given, in a Canadian taxation context, to economic growth versus equity; thus the new graduate will be trained in the techniques of law, which represents some progress over his

⁷Text of a speech in 56 Yale Law Journal, p.1345.

predecessors who were concerned almost entirely with the wording of the law--at least he will be a competent legal technocrat. However, this is still some distance removed from the policy-making level of ability which Professor McDougal offers as the goal of legal education.

Recent law school experiments in "clinical" training (through neighbourhood or "store-front" legal aid offices), special research seminars, and inter-disciplinary courses and seminars may help to close this gap. On the other hand, as the law school emphasis moves increasingly in the direction of policy-making, there is a widely-felt concern that the theory-practice gap will grow. Thus lawyers worry that future law graduates may make fine legislators-to-be, if such an opening were to be offered to them, but could not draft a simple contract, interview a client, or fill out the elementary forms necessary to move an action through the courts. This is the deficiency which the present post-LL.B. training is intended to correct; current trends in law schools suggest the importance of some form of practical legal training will grow in the future.

The Post-LL.B. Period

The post-LL.B. period in Ontario consists of a Bar Admission Course administered by The Law Society of Upper Canada. The course comprises two parts, a period of "articles of clerkship" and the "teaching period." For the

sake of convenience the latter is often referred to as the Bar Admission Course, although properly speaking, articling is also part of the Bar Admission Course.

Articling students are required to serve their principal for at least twelve months, commencing about September 1. As this leaves unfilled the period from the end of the law school year (in early May) until the fall, many students begin articling in June. No credit is given for any service prior to September, so that the 12-month requirement can only be met by staying on until the following September. Thus many students actually serve for fifteen months.

Both student and principal (who can be any member of the Law Society in good standing) are required to sign affidavits attesting to the length of the period spent. Beyond this formal requirement there is no other control exercised over articling. Tasks are assigned by the principal, to be carried out by the student. This can include anything from serving writs and searching titles to assistance in the preparation of cases for court and documents for incorporation of companies. In extreme cases of dissatisfaction, the student can leave his principal and transfer his articles to a new firm, but this is quite rare.

For the student the purpose of articling is to provide exposure to the workings of a real law practice, teaching him some of the elementary skills required of lawyers. For the firm, the process has two major benefits: the net freeing up of some lawyer's time for more remunerative work, and the recruitment opportunity provided at relatively low cost. (For example, a large firm may hire ten articling students each year, and give permanent offers to the best three. The average articling salary in Toronto today is \$90-100 per week.)

The Bar Admission Course teaching period begins in September and runs to the following March. Unlike articling, which can be done anywhere in Ontario, the course is given only in Toronto. This requires moving to Toronto for six months for about half the Province's law students, and in many cases, the dislocation of their wives (who are often working) and children.

The Course, which requires full-time attendance, furnishes students with a complete set of up-to-date precedents and legal forms. It is taught by legal practitioners, and administered by a permanent staff employed by The Law Society. The objectives of the courses as described in the Calendar are to fill the gaps in the students' articling experience, and, as everyone called to the Bar is licensed

to "hang out his shingle" immediately and to practice any branch of law on his own, to ensure that all lawyers have a uniform knowledge of the essentials of legal practice. There are thirteen courses in all, given in sequence, with an examination at the end of each course. Courses range from one day to three weeks in length, and each student is required to complete all courses without option. Honours and pass standings are given, as well as medals and prizes for high standing overall and in individual courses. As the student's record in all courses determines his pass standing, it is possible that a student who badly fails his first course will be allowed to stay on to complete his other courses, to be told at the end that he has failed the entire Course. No supplemental examinations are allowed. He may be permitted to repeat the entire teaching period once.

While articling is financed entirely by the clients of the principal's law firm, the teaching period is no longer directly subsidized by the practicing profession.⁸ The operating costs, and even some of the capital costs of renovations of the Bar Admission facilities at Osgoode Hall

⁸If, indeed, it ever was. See Chapters VI and VII.

are supported by the Department of University Affairs. Students in the teaching period are eligible for loans and grants under the Ontario Student Awards Program. The student pays \$101.00 upon commencement of articling, \$290.00 prior to the beginning of the teaching period (raised to \$350.00 in 1970-71) and \$215.00 upon completion of the Course, for a total of \$606.00 in 1969-70, \$666.00 in 1970-71. (Although only the middle payment is officially attributed to the Bar Admission teaching period, as the student receives nothing else in return for his two other payments, as the Law Society incurs no other significant student cost besides the teaching period, and because the student must make these payments in order to participate in the benefits of the Course, the entire sum is treated in this study as part of the cost of the teaching period.) There may be some indirect subsidy from the legal profession in that many of the guest lecturers speak without remuneration, and some of the instructors are paid less for teaching than they could obtain in the equivalent number of hours in legal practice.

The Statutory Background of Legal Education

The new statute governing legal education in Ontario is The Law Society Act, 1970, proclaimed on October 1, 1970, with the Regulations made under the authority of the Act

having been filed on October 6, 1970, as O. Reg. 419/70.⁹ The Rules have been passed but are available only in draft form at the time of writing this report.

S. 10 of the Act states that the government of the Law Society (including licensing to practice) shall be conducted by the Benchers of the Society, whose election, rights, duties and privileges are defined in subsequent sections of the Act and Rules.

S. 28(d) places student members (defined as those in the Bar Admission Course, including articling) under the control of the Benchers, describing them as having "all the rights and privileges prescribed by the Rules." A careful study of the Rules and Regulations reveals that in fact there are no rights or privileges prescribed. For example, Rule 9(1) requires the Secretary to make out a list of members entitled to vote at elections for Benchers; but S. 1(c) of the Act says that members "does not include a student member," thereby precluding students from voting. On the other hand, Regulation 15 states that disciplinary proceedings governing members "apply mutatis mutandis" to student "members" in respect of "conduct unbecoming a student member," penalties for which are described in S.38 of the Act, and include allowing a committee of Benchers to "suspend his rights and

⁹The Ontario Gazette, October 17, 1970, p.2,551.

privileges as a student member..." or to "make such other disposition as it considers proper in the circumstances."

S. 52(1) of the Act expressly authorizes the continuation of the Bar Admission Course, and S.52(2) allows the Society to grant degrees in law. The latter is a curious anachronism, as the Society no longer operates a law school. But in the event of a serious dispute with the province's law schools, it could begin again to grant degrees, as it did before Osgoode Hall Law School became affiliated with York University in 1968. As Rule 35(2)(b) empowers the Legal Education Committee of the Benchers to approve courses and universities for the purpose of admission to the Bar Admission Course, and Regulations 2 and 26 require all students to pass the Course prior to being allowed to practice, the Society has the ultimate statutory power to force the law schools out of the teaching of law. By denying entry to the graduates of any one (or all) of the province's law schools into the Bar Admission Course, as no student would want to repeat his law degree in an accredited school, the disapproved law school would, in effect, be useless, and would inevitably collapse. While it is not suggested that the Law Society is likely to exercise this power, it would not have been so recently written into the Act had its inclusion not been considered necessary. The law schools are undoubtedly aware

of this, and therefore, however cordial the relations between the Law Society and the law schools, this statutory constraint cannot be entirely ignored.

The Society's authority to make rules governing student members is found in the Act, in S.54(1) (12); (13) - fees and levies; (15) - prescribing oaths; (18) - procedures for call to the Bar; (19) - articling; (20) - bursaries, scholarships, medals and prizes; (21) - extension courses, continuing legal education and legal research; (22) - degrees in law; (23) - libraries.

The Society's authority to make Regulations is in S.55(1) - respecting "any matter ancillary to the provisions of this Act with regard to the admission, conduct and discipline of members and student members..."; (7) - "respecting legal education, including the Bar Admission Course."

The most important Rules relating to legal education are: 29, 35, 36, 37, 50, 51, 53 and 54. The key Regulations are: 1, 2, 15 and 26.

The operating climate of legal education, described in Chapters VI and VII, is by no means as cold or hostile as the foregoing statutory outline would suggest. Nevertheless, a candid discussion of the legal framework in which decisions about legal education are made was judged to be necessary for a thorough understanding of the decision-making process.

III. The Economics of Post-LL.B. Legal Education - The Cost/Benefit Study

Methods and Assumptions

Cost-benefit studies are conceptually quite simple: the total costs are subtracted from the total benefits during the relevant time span, to arrive at a net benefit. The net present value can be discounted (e.g. at 5 per cent or 10 per cent) to adjust for the diminished value of benefits realized over the future, rather than now.

Of course, one limitation of cost-benefit analysis is that it can only deal with costs or benefits which are readily quantifiable in monetary terms. It is recognized that almost any human endeavour has non-monetary costs and benefits, and this is particularly true with an activity such as education. Chapters IV - VII of this study are concerned with just these factors. The Conclusions in Chapter VIII attempt to include both monetary and non-monetary costs and benefits in an overall appraisal. The portion of the mailed questionnaire seeking other than economic cost-benefit data (as well as most of the other research) was included to provide a quantitative basis for the non-monetary factors.

In spite of the possibility of quantifying non-monetary considerations, any analysis of such factors is, relative to economic studies, more heavily burdened with value assumptions (which are not always shared). Therefore cost-benefit

studies, notwithstanding their economic limitations, can provide a more neutral, objective component to rational decision-making; when supplemented by an assessment of some of the non-monetary values (e.g. socialization, enforcement of minimum standards of professional competence) they can offer a rather full set of criteria for the policy-maker.

The cost-benefit study of post-LL.B. legal education required some departures from the normal techniques, because of the unusual practical and conceptual problems encountered. On the practical side, the ordinary sources of detailed cost data on post-LL.B. training were simply non-existent, necessitating an original survey of post-LL.B. students. Because they are usually extremely busy, and are in the process of severing ties with formal education, post-LL.B. students cannot be "leaned on" to fill in completely or to return questionnaires in the same way that B.A. or M.A. students can. As the pre-test showed, to obtain good completion and return rates, brevity had to be favoured over depth of information. This applied a fortiori to practitioner groups. Fortunately the completed questionnaires were of sufficient quality (at good response rates) to provide usable cost and benefit figures for all items (with the possible exception of two minor costs which had to be estimated from other sources, and which are clearly so indicated in the calculation tables).

There were two major conceptual problems:

1. Calculating net benefits presupposes the existence of alternative investment decisions. In the case of post-LL.B. education, the most obvious is the LL.B. alone. Yet it may be unrealistic or merely academic to assume that the only policy alternatives are the retention of the current system or its complete abolition. Clearly the termination of all post-LL.B. requirements is one alternative to be considered. Of some 300,000 lawyers in practice in the U.S. in 1967, very few had articulated, and these for six months or less; none had taken a six-month bar admission course. The status quo is another possibility. The third choice lies somewhere between these, and the increasing pressure for a one-year post-LL.B. Articling/Bar Admission combined course indicated that this particular compromise should be included as an alternative to be studied. Thus the first alternative chosen was the LL.B. followed by an immediate Bar examination, hereafter referred to as Alternative "A". Beyond this, the costs and benefits of the one-year combined program, designated Alternative "B" were compared with this base; likewise the present 22-month program labelled "Current System" was compared with the base period, Alternative A.
2. As dollar values had to be assigned to the salary (benefit) level under each of the three alternatives, this could only be done by someone with both a good working

knowledge of salaries in the legal profession, and the experience to estimate what salaries might be in each of the two hypothetical situations (no post-LL.B. training, or reduction to one year). Government survey data of actual starting salaries, or projections of B.A. graduates three years out (to approximate the LL.B. time, for Alternative A) were judged to be less meaningful than an assessment by the legal profession itself. Therefore, both of the senior practitioner groups (graduation years 1957-66, and pre-1957) were asked to estimate the salaries under the three alternatives.

Benefits ideally should have been calculated over the working lifetime. This would have required establishing several income points over time in order to describe the salary curves for each of the three alternatives. However, practitioners would probably not have bothered to make this many estimates, and the non-response rate would have soared (these respondents fee their time out at \$25-50 per hour, and the questionnaire took about half an hour to complete as it was). Therefore, only three points in time were asked: salary at starting, after two years, and after five years. As the present call to the Bar is about 22 months after LL.B. graduation (in effect, two years), the "after two years" time points enabled comparison of the starting salary under the current system with the two-years-out salary of an LL.B. graduate (of the same graduating year) who was

admitted to practice immediately after his LL.B. The "after five years" point allowed a comparison of incomes for a total of seven years. (See Figure E-1, Appendix II.)

Since the behaviour of incomes at higher age levels could not be projected from the three points, benefits could not be adequately projected beyond the five years' estimates. No calculations of costs or benefits were taken past the seven-year point (for a detailed description of the methods used, please see Tables E-1 to E-6, in Appendix II).

Net present value was calculated on both social and private bases, the former being defined as total costs and benefits to the total economy, the latter being those relating only to the individual. Costs and benefits are defined in the economist's sense, that is, any costs or benefits capable of monetary quantification, not just those which, in cash-flow accounting terms, would require an outlay or provide revenue in the form of cash (this definition is particularly important as the largest single cost item is foregone earnings). The only monetary benefits found in this study are salary differentials.

The central questions which were attempted to be answered are:

- 1) Do the benefits outweigh the costs by a worthwhile margin (i.e. in economic terms only, is the program worth retaining)?

- 2) Who are the prime beneficiaries, and who bears most of the cost (i.e. is the cost allocation fair)?

Findings

(For reference please see Tables E-1 to E-7 in Appendix II, Table S-35 in Appendix III, and the questionnaires for 1957-66 and pre-1957 practitioner groups, in Appendix VI.)

1. Do the benefits outweigh the cost by a worthwhile margin?

The undiscounted net present values (calculated to age 33 only) were found to be as follows:

	<u>Undiscounted Net Present Value to Age 33¹</u>	
	<u>Social</u>	<u>Private</u>
1. <u>From Estimates of 1957-1966 Practitioners</u>		
Current System (LL.B. + Art. + B.A.C.)	\$-24,896	\$-18,369
Alternative B (1 year combined Art./ B.A.C.)	\$-11,768	\$- 8,853
2. <u>From Estimates of pre-1957 Practitioners</u>		
Current System (LL.B. + Art. + B.A.C.)	\$-19,158	\$-13,940
Alternative B (1 year combined Art./ B.A.C.)	\$- 9,180	\$- 6,990

All the above signs being negative, neither the current system nor the proposed shortened alternative is estimated to have any positive economic value; in fact, given that the

¹Base = Alternative A, immediate Bar examination.

calculations represent only seven years of about a 40-year working lifetime, post-LL.B. education would appear to involve a substantial net monetary loss. As shown in Table E-1, this is not because the costs outweigh the net benefits--the net benefits were also negative. Note that there is no evidence that the net benefit would be positive in later years.

That the benefits of higher education should be described by so large a negative figure over so short a time span appears suspicious at first glance. However, the result can be explained by the fact that the alternative to the current system is two years of practice. In effect, practitioners have estimated that two years of practice (or one year, in the case of Alternative B) provide substantially greater benefits than the equivalent time spent in Articling and taking the Bar Admission Course. While it may be somewhat of an oversimplification, practitioners would appear to be saying that the best way to learn the practical aspects of how to be a lawyer is by being a lawyer and not by serving as an articled clerk or by taking practically-oriented courses. This is not surprising, as the first 12 months in practice, on average, allow the lawyer to do far more than the articling student would be permitted to do (although this may not be true of the first 3-6 months, when both are just out of school). The next 3 months would further increase the practitioner's edge over

the student who articulates for 15 months, and this applies a fortiori to the student who articulates for only 12 months, working in another job or taking the summer off as a holiday period. Whether the 6 months in the teaching period of the Bar Admission Course are judged to be more or less valuable than the equivalent time in practice cannot be determined from the available data, but even if the Course is considered of greater benefit, this difference must be spread over the entire two years, and, as seen from the net present value figures, does not offset the negative benefits accruing during the first 15 months.²

Therefore, unless the non-monetary benefits are substantial, and judged as being sufficient to outweigh the monetary losses, the current system should not be retained and the proposed alternative one-year program should not be adopted. Although alternatives shorter than one year were not studied, the general sense of the data suggests that no post-LL.B. training would be more beneficial than two full years of ordinary legal practice.

2. Who are the prime beneficiaries, and who bears most of the cost?

It is usually possible in cost-benefit studies to say who

²While it is true that, strictly speaking, the current system does not occupy two full years, as perceived it seems to take that long; of course, the two-month difference would have no substantial effect on the net present value calculations.

benefits and who pays. Since the benefits are entirely in the form of salary, one would expect most of the benefits to be private (i.e. to go to the newly-graduated lawyer), the only social benefit being the tax obtained on the differential in income. Similarly, as most of undergraduate and especially post-graduate education cost (e.g. medical doctors) is borne by the government and not by the student, the private net gain is usually substantial, the social net gain generally smaller, but positive (although sometimes the latter is rendered negative by discounting). However, post-LL.B. legal education is very different from this characteristic pattern.

In the first place, the longer the student stays out of the regular labour force of his profession, either in courses or in relatively poorly-paid apprenticeships, the greater will be the foregone earnings. Foregone earnings represent almost 69 per cent of the social costs and over 73 per cent of the private costs of the current system (see Summary in Table E-4). Because no government subsidy is presently available for articling students, and since the average grant per student (\$350 in 1969-70, per Note 4, Table E-4) in the Bar Admission Course does not offset the \$606.00 tuition and other fees the student is required to pay during the post-LL.B. period, the great majority of the cost is borne privately.

About 72 per cent of the total costs of the current system are borne by the student, and about 75 per cent of the costs of the proposed combined program, both unusually high private to social cost relationships.

Although a very large share of the cost falls on the student, this might not be regarded as unjust if he also received a substantial benefit. However the benefits, as mentioned above, were negative figures. Thus the student is required by society to incur almost three-quarters of the costs of a training program (\$6,579 of \$9,174), and also to bear about three-quarters of the total negative benefits (\$-11,790 of \$-15,722) in the form of salary loss. Nor would these proportions be changed under the proposed combined system. To compel the student to bear such a large cost (both as a share of the total cost, and in absolute terms) when the benefits are negative seems unreasonable.

IV. The Sociology of Legal Education - Demographics and Attitudes

A. Educators

1. Characteristics of the Educators

Several factors in the background of the educator groups help to explain their orientation to the subject of legal education. Aside from the obvious fact that Bar Admission instructors are also, by vocation, practitioners, the survey sample indicates:

a) Age and year of Graduation

Both law professors and Bar Admission instructors tend to be reasonably young. Measured both in terms of recency of graduation from law school, and age, professors show a somewhat shorter period of experience than do instructors.

	<u>Year of Graduation</u>			<u>Age (years)</u>	
	<u>65-70</u>	<u>60-64</u>	<u>Total</u> <u>post 1959</u>	<u>under 30</u>	<u>Total</u> <u>under 40</u>
Professors %	46	22	68	28	76
Instructors %	20	45	65	7	72

(See Tables S-1, S-4, S-5 in Appendix III.)

For the balance, about one in five professors (22 per cent) and one in three instructors (30 per cent) indicated a year of graduation prior to 1958--the commencement of the Bar Admission Course.

b) Experience

Corresponding to their recency of graduation, the majority of educators have been teaching five years or less--58 per cent in the case of professors, significantly more so for instructors (76 per cent).¹

In terms of breadth of teaching experience, professors perhaps expectedly cover a wider range, the modal number of subjects taught being three. 97 per cent of instructors concentrate on only one subject. For neither group does this data speak to the question of prior curriculum experience, which was not determined. (See Table S-2, Appendix III.)

c) Where trained

Professors differ significantly from instructors in the location of their law school training. Whereas the vast majority of instructors (88 per cent) received their degrees from Ontario schools, a similar proportion of professors (84 per cent) were educated outside of Ontario - 80 per cent outside Canada (predominantly in the United States--54 per cent). (See Table S-3, Appendix III)

d) Practice experience

Although the fact of having practiced law does not relate

¹For definitions of significance with these sample sizes, see Tables M-1 and M-2, at the end of Appendix I.

directly to the question of practical orientation, it is noted that about half the professors (54 per cent) have never practiced law--90 per cent do not do so now.

In terms more directly pertinent to the context of this study:

- 54 per cent of professors have Articled, but only 30 per cent in Ontario.
- 24 per cent of professors have taken a Bar Admission Course, but only 14 per cent in Ontario.

(See Table S-4, Appendix III)

e) Size of firm

Finally, background on instructors indicates a high degree of association with larger law firms, relative to the probable incidence of such firms. Over half the instructors in the sample (58 per cent) were associated with firms having 16 lawyers or more - only 10 per cent with the small, single-lawyer firms. (See Table S-5, Appendix III)

2. The Views of The Educators

As with all sub-groups, the subject was introduced to educators by asking for their volunteered comments as to areas in greatest need of improvement for Ontario legal education as a whole.

Response from both educator groups was generally rich and varied--rather difficult to reflect in a quantified sense. In summary, however, the main thrust centered on two issues:

a) Length

Common to both groups was the expressed need to shorten the period of legal education, with primary emphasis on the post-LL.B. program. Reference to contraction in time was a common thread, but not the sole desired effect; the need for greater integration, more cross-communication was also mentioned in the commentary on shortening the process.

b) Practicality

A second area was of significance only among the instructor group. This referred to the need to increase the practicality of legal education, both generally and with specific reference to the LL.B. program.

Secondary points from both groups focused on the need for graduate study opportunity, including reference to specialization and, in a few instances, certification; and on the need for "higher standards."

The proportions of respondents commenting on these issues are summarized as follows:

	<u>Professors</u>	<u>Instructors</u>
Reference to:		
shortening, combining Post-LL.B.	42%	32%
increased practicality - total	4	40
post-grad. study, specialization	16	15
higher standards-total	14	7

(See Table S-6, Appendix III)

c) Alternatives to Present System

Although not significant in a statistical sense, it may be noted that instructors gave somewhat less emphasis to the time contraction issue than did professors. This slight difference was brought out more significantly in a subsequent structured question in which preferences were asked between three differing approaches for admission to practice.

Summarily, these were:

- i) Current requirements (LL.B. + Articling + Bar Ad.)
- ii) Alternative A (LL.B. + immediate Bar exam.)
- iii) Alternative B (LL.B. + 1 year combined Articling and Bar Ad.)

Both alternatives were described as being available options to the current requirement.

Alternative A was clearly the more extreme in the sense of both time contraction, and the fact of its complete dismissal of post-LL.B. preparation for practice. Consequently, instructors dismissed it virtually in total. And while one-quarter of professors did vote for it as their first preference, this alternative ran a poor second to the first choice, Alternative B.

The significant difference between the two groups occurred in their respective choices between "Current" vs. Alternative B. While professors gave by far the majority of their votes to Alternative B, the instructors' vote directionally favoured the current system, although not significantly different from Alternative B.

	<u>Professors</u>	<u>Instructors</u>
First preferences		
Current	6%	48%
Alternative A	24	2
Alternative B	62	35
Not stated	8	15

(See Table S-7, Appendix III)

Both educator groups were asked their opinions about the Bar Admission Course in two specific areas.

i) Electives in Bar Admission Course

The first concerned their view as to whether the course curriculum should consist of totally mandatory subjects, as is the case today, vs. optional electives. To some extent the differences between the two groups trace to a significant non-response level among professors (a function of their lack of direct experience with this phase of education, as noted earlier). Even so, it would appear that while neither group support the concept of a totally optional approach, professors see more merit in a part-way move in this direction than do instructors.

	<u>Professors</u>	<u>Instructors</u>
	<u>Total</u>	<u>stating</u>
All mandatory	32%	41% 58%
Combination of both	36	47 38
All optional	10	12 2
Not stated	22	-- 2

(See Table S-8, Appendix III)

ii) Subjects in Bar Admission Course

The second area of question concerned 11 specific subjects, and the extent to which each was in need of more, or less, emphasis. Here again, non-response among professors in particular, approximating one-third of respondents, clouded the results to some extent. Nevertheless, it is clear that among both education groups, the general leaning highlights the perceived importance of broader social and personal conduct areas, and downgrades three more specific areas which currently occupy a heavy proportion of the curriculum.

Using the calculated "average" for the 11 subjects, subjects with the greatest deviation on both sides of the norm are shown below (excluding those indicating "no change," or not stated). The column headed "net difference" is the proportion signifying more emphasis, minus those stating less emphasis needed.

	Professors			Instructors		
	More	Less	Net Diff.	More	Less	Net Diff.
<u>11-subject average</u>	12%	19%	- 7	15%	11%	+ 4
Legal Aid	46	4	+42	30	2	+28
Professional Conduct	26	14	+12	20	15	+ 5
Domestic Relations	24	8	+16	35	0	+35
Estate Planning	2	40	-38	2	30	-28
Real Estate	4	34	-30	7	10	- 3
Civil Procedure	2	28	-26	0	30	-30

(See Table S-9, Appendix III)

While the two educator groups were directionally similar concerning the above, there were two subject areas on which their respective opinions differed.

	<u>Professors</u>			<u>Instructors</u>		
	<u>More</u>	<u>Less</u>	<u>Net Diff.</u>	<u>More</u>	<u>Less</u>	<u>Net Diff.</u>
Creditors Rights/ Bankruptcy	0	24	-24	17	7	+10
Corp. & Commercial Law	8	24	-16	23	7	+16

(See Table S-9, Appendix III)

B. Practitioners and Students

This section, and those to follow, will deal with the study findings from the viewpoint of practitioners and students--individually and comparatively.

1. Characteristics of Practitioners and Students

As was done for the educator groups, a brief sketch of the practitioner and student samples follows.

a) Year of Graduation

On a combined (weighted) basis, practitioners in this sample comprise a reasonable cross section in year of graduation, with no dominance between the years 1949-1968. Some skewing occurs at the two ends of this period (1969 - 10%) (pre-1949 - 28%). (See Table S-10, Appendix III.)

b) Size of firm

Practitioners in total tend to be weighted toward smaller firms; one in four is associated with a firm of under 5 lawyers; only 7 per cent with firms of over 15 lawyers. The modal average firm size is 2-4 lawyers.² A significantly lower proportion of older (pre-1957) practitioners indicated this small firm association, although part of this may be simply a function of non-response:

<u>Size of firm</u>	<u>Year of Graduation</u>		
	<u>67-69</u>	<u>57-66</u>	<u>pre-1957</u>
1 lawyer	19%	21%	6%
2 - 4	<u>35</u>	<u>36</u>	<u>27</u>
Total under 5	54	57	33
Not stated	2	2	14

(See Table S-11, Appendix III.)

c) Law School attended

By law school attended, the two student groups are similar, some 60 per cent coming from Osgoode/York and Toronto in that order. Practitioners naturally reflect the increasing importance of Osgoode as they move back in time; on a weighted basis, 6 per cent of practitioners graduated from a school outside Ontario.

(See Table S-12, Appendix III.)

² The mean average size of firm obtained by dividing the total number of lawyers in Ontario by the total number of law firms is roughly 2.5 (Source: The Canada Law List). However, this average is biased by several factors, e.g. lawyers registered but practicing with other than a law firm or semi-retired lawyers shown as one-man firms.

d) Age

Data on age suggests that a student about to enter practice is, in most instances, mature chronologically speaking. By way of background, age profiles for the five sub-groups are as follows:

<u>Group</u>	<u>Modal Class</u>	<u>Age Concentration</u>
Articling Student	25-26 (51%)	- 83% between 25-29
Bar Ad. Student	27-29 (49%)	- 87% between 25-29
Prac. 67-69	27-29 (51%)	- 86% between 27-34
Prac. 57-66	30-34 (48%)	- 87% between 30-39
Prac. Pre-1957	50 + (48%)	- 95% 40 and over

The data also suggests a non-significant increase in the importance of women in the legal profession.³

<u>% Women (weighted)</u>	
Students (3)	6%
Practitioners	2%

(See Table S-13, Appendix III.)

³This has grown, so that now about one-sixth of the 1970-71 first year class at Osgoode Hall Law School is female; and the percentage of female practitioners can be expected to increase substantially over the next few years.

e) Solo practitioners and practitioners with other than law firms.⁴

Because the questionnaire was mailed in June, the Bar Admission students' "anticipated" position upon graduation was probably actual, in most cases, and can be included with those of practitioners. The responses indicate a declining trend in those setting up one-man practices immediately upon graduation, probably attributable to increasing specialization and the growing overhead diseconomies of solo practice.⁵ No clear trend is discernible for practitioners with other than law firms.

⁴ Includes Crown Attorneys, corporation house counsel, and other business and government positions.

⁵ This trend is corroborated by actual physical count of those in solo practice (although we are aware of no counts of those starting on their own.) A 1950 survey showed that 43 per cent of all Ontario lawyers were in solo practice; this had dropped to approximately 21 per cent by 1966. (Table S-14 shows similar figures for those practicing alone at the present time.) In the U.S. the same trend is apparent. See S. Arthurs, "Discipline in the Legal Profession in Ontario", Osgoode Hall Law Journal, Vol.7, No.3, p. 235 at p. 243.

<u>Group</u>	<u>Position in Law Firm at Start</u>		
	<u>Solo Prac- titioner</u>	<u>Employee or Partner</u>	<u>With other than Law Firm</u>
	(%)	(%)	(%)
Articling Student (anticipated)	8	73	12
Bar Ad Student (anticipated)	7	88	4
Prac. 67-69 (on starting practice)	10	81	9
Prac. 57-66 (on starting practice)	11	77	11
Prac. pre-1957 (on starting practice)	17	75	7

(See Table S-14, Appendix III.)

f) Specialization

By the definition of "one half of your time or more," used in the survey, about half of the practitioners consider themselves to be "specializing" in one or another area of law. Although the corresponding figure for students (54 per cent) appears comparable, this makes no assumption about the unknown proportion of the one-quarter who were undecided. It seems reasonable to assume from the data that at least one-third of the undecideds will specialize, on the same definition as above. Conservatively speaking, therefore, those now entering practice appear even more specialty-oriented than those going before.

	<u>Students (weighted)</u>	<u>Practitioners⁶ (weighted)</u>
intending to be/are now specialists	54%	51%
no specialization/ undecided	41	33
not stated/not practicing	5	16

(See Table S-15, Appendix III)

2. Views of Practitioners and Students

a) Volunteered commentary

As with the educator groups reported earlier, principal volunteered commentary concerning needed improvements centred on shortening the process--the emphasis being placed on the post-LL.B. period. The incidence of this criticism varies inversely with the recency of educational experience--highest among Articling students, relatively minor among pre-1957 practitioners. Conversely, reference to need for more practicality in teaching instruction increased in relative importance with the length of the group's experience. And similar to educators, desire for greater opportunity to specialize was an important secondary comment throughout.

⁶Only student groups were asked about future intentions to specialize; practitioners were asked whether they are or are not specialists now. Specific specialities (corresponding to the categories used by the Law Society in their referral service) were also tabulated.

	Students		Practitioners				
	Total	Articling	Bar Ad.	Total Weighted	67-69	57-66	pre-57 ⁷
% Volunteered Reference to:							
Shortening process	57	64	50	20	52	20	9
More practicality	39	35	43	26	34	31	21
Specialization	7	3	11	12	9	9	13

(See Table S-16, Appendix III.)

b) Rating of phases of legal education

Bar Admission students, together with the two most recent practitioner groups, were asked to distribute ten points as a means of indicating the relative contribution to professional development of various phases of learning experience. For practitioners, the LL.B., the two post-LL.B. phases, and first two years of practice were appraised. The latter was considered important for a realistic assessment, despite the fact that it created a non-parallel numerical system in comparison with Bar Admission students, who could rate only the three educational phases.

At least two types of bias need to be considered in viewing results. The first, bias of recency, may well be reflected in the relatively high point values awarded to the first two years of practice. The second, a function of time devoted to each phase, may also be operative among practitioners--although not apparent among Bar Ad students.

⁷As with several other questions, non-response for this group was considerable - 42 per cent in this instance.

Results are summarized below in terms of per cent of points given to each phase; to provide some bases of comparison, practitioner results are also shown recalculated to exclude first two years of practice.

As noted, the three educational phases receive equal point allocation from Bar Admission students. Among practitioners, points awarded to law school are significantly higher, and to Articling and Bar Admission, lower.

	Bar Ad. Students % points	Pract. 67-69		Pract. 57-66		% Time spent in months	
		Excl.		Excl.		Excl.	
		Total	Practice	Total	Practice	Total	Practice
		%	%	%	%	%	%
LL.B	34	22	38	26	41	33	50
Articling	34	19	31	20	31	21	36
Bar Ad.	32	19	31	18	28	9	14
1st 2 years practice	--	40	--	36	--	37	--

(See Table S-17, Appendix III.)

c) Alternatives to present system

All groups were asked to vote on the same three alternative means of entering practice, as reported earlier for educators.

All groups reflect the same tendency to reject Alternative B (immediate exam) as did educators--signifying a strongly-felt need to maintain some form of qualifying buffer between LL.B and practice.

Both student groups approximated most closely the Law professor findings, with a strong preference for the abbreviated Alternative B.

Among practitioners, a similar preference for Alternative B holds among recent graduates, although not as strong as for Articling students. Further, as practitioner groups move back in time, their voting takes on more comparability to that of the Bar Admission instructors, with desire for the current status superseding Alternative B among the oldest practitioner group.

Results are summarized below, showing educator preferences for comparison:

% Preferences:	Profs.	Art. Students	Bar Ad. Students	Practitioners			Bar A Inst.
				67-69	57-66	Pre- 57	
Current system	6	11	13	25	35	51	48
Alt. A - immediate Bar exam	24	12	7	4	7	4	2
Alt. B - 1 year Articling & Bar Ad.	62	72	61	56	48	12	35
Not stated	8	5	19	15	10	33	15

(See Table S-18, Appendix III.)

C. Attitudes Toward Articling (Practitioners and Students)

1. Rating of Articling

Excepting the pre-1957 practitioner group, respondents were asked to rate their Articling period as an educational experience on a four-point semantic scale.

Both student groups are identical in assigning a positive value (excellent or good) in two-thirds of the cases. Taking at face value the proportion of practitioners who gave similar

ratings, they appear to be significantly below the positive student results. This conclusion is clouded to some extent by a 27 per cent non-response among 57-66 practitioners. If it is assumed that these distribute in proportion to those responding (which may or may not be true), results of practitioners as a whole are not dissimilar to those of students.

	<u>Students</u>			<u>Practitioners</u>		
	<u>Total</u>	<u>Art.</u>	<u>Bar Ad.</u>	<u>Total</u> <u>Wted.</u>	<u>67-69</u>	<u>57-66</u>
% rating articling Excellent/ good	64	64	64	53	57	51

(See Table S-19, Appendix III.)

While the above stands as a reasonable general appraisal, some difference is noted at the extremes of excellent vs. poor when individual ratings are examined in more detail: for example, in comparing Bar Ad students and recent graduates (both of whom have articled within a relatively close time period). Whether for reasons of actual improvement in Articling, or simply as a matter of different perspective, the more recent students reflect a significantly better picture of Articling.

	<u>Bar Ad. Students</u>	<u>Practitioners 67-69</u>
Rated:		
Excellent	30%	22%
Poor	9	17

(See Table S-19, Appendix III.)

2. Reasons Given for Rating

a) Specific attributes

The main reason given in support of favourable ratings assigned to Articling held consistently across all sub-groups--its value in terms of practical experience. Criticisms tended to bridge several areas, particularly the assignment of too many menial tasks, inadequate time given by the principal, and narrowness of exposure. Comparing Bar Admission students' specific criticisms against those of recent graduates provides some clue as to the possible reasons why the former viewed their Articling experience in a somewhat more favourable light:

<u>Those rating articling fair or poor</u>	<u>Bar Ad. students</u>	<u>Recent Graduates (Practitioners 67-69)</u>
Criticisms:		
Principal gave inadequate time	20%	30%
Narrowness of exposure	17	28
Insufficient responsi- bility	9	23

(See Table S-20, Appendix III.)

Six specific attributes were rated in connection with the Articling period. The two student groups proved very comparable in rating values; the one exception to this concerned time given by the principal, for which Bar Admission students assigned higher ratings than did Articling students.

The relative levels of positive ratings assigned by recent graduates to each attribute followed a similar pattern to that of students; however, their tendency was to give lower positive evaluation throughout.

As generalizations, the reasons given for rating level were:

i) The recognized practical orientation of Articling; highest positive values were assigned to "breadth of exposure" and "usefulness of tasks" as contributing to practical learning;

ii) Downgrading, in relative terms, the instructional aspects of Articling, specifically "time provided by the Principal," and coverage of the B.A.C. curriculum guide.

iii) Far lower than all other ratings was that assigned to "quality and number of seminars." A probable explanation is that formal seminars are simply not a regular part of the Articling process.

(See Table S-21, Appendix III.)

b) Duration

The question of the duration of the post-LL.B. process was mentioned earlier as one of the important comments alluded to by all sub-groups. A direct question on this issue as it relates to Articling indicates that a significant proportion do feel that the period spent is longer than necessary.

That this feeling is paramount among Articling students is not surprising, since it probably reflects a degree of impatience toward Bar admittance. Among Bar Admission students and recent graduates (67-69) there is still a marginal majority who feel it is "too long." As practitioner groups move back in time, criticism of length diminishes significantly. This is understandable among the older, pre-1957 group; while many of these spent a considerable length of time Articling, it was also true that many did not spend three years obtaining an LL.B. Hence the total time required was shorter than now holds true.

The case for the 1957-66 group is more difficult to explain. Compared to student and recent graduate reaction, a significantly lower proportion considered their Articling experience too long. This was despite the fact that on an average this group spent longer Articling than did the younger respondents.

In tabulating the data, it was observed that the 1957-66 group really fell into two camps on the subject of Articling length. Those entering practice in 1957-59, at the time the Bar Admission Course was initiated, and those who entered practice during the early 1960s. The former, late 1950s group were less inclined to consider Articling too long. An influencing factor may be that these practitioners had just been spared a two-year articling period, which was the requirement until 1957

	<u>Students</u>			<u>Practitioners</u>		
	<u>Art.</u>	<u>Bar</u>	<u>Ad.</u>	<u>67-69</u>	<u>57-66</u>	<u>pre-57</u>
Articling length:						
too long	72%	56%		53%	31%	9%
about right/						
too short	28	42		46	68	85

Significantly, however, the opinion held as to length is not simply a function of how long was spent. Among both student groups, such opinion does not vary according to whether the period was more or less than 12 months. Among recent graduates and 1957-66 practitioners, only a modest correlation appears, perhaps to be expected in that these groups are now looking back from a vantage point of practical experience.

(See Table S-22, Appendix III.)

If its length had been the major factor influencing Articling ratings, a consistent relationship should have occurred between opinion as to length and overall ratings, as well as between the time the student actually spent articling and overall ratings. While there is correlation between the overall rating and opinion as to length, even among those giving articling a positive rating (excellent/good), a significant proportion felt that it was too long.

	Articling Students'	
	Overall Rating	
	Excellent/ Good	Fair/ Poor
Of those who rated articling:		
% stating articling was too long:	64	85

Furthermore, the level of positive rating assigned by Articling students is actually higher among those experiencing a longer period of articling than those spending a shorter time.

	Time Spent Articling	
	12 mos. or less	Over 12 mos.
Of those who spent:		
% rating Excellent/ Good	52	74

Clearly more is operative in respondent views of the articling period than the criterion of duration; the latter is indeed a factor, but not of itself a prime determinant.

3. Factors Influencing Rating

Five areas were examined individually in search of influencing factors; in each case the overall rating was used as the dependent variable for cross-analysis purposes.

i) Influence of employment:

Whether or not an Articling student was subsequently employed by the firm with whom he articulated proved to have a significant correlation with overall rating. Judging by sample returns, the importance of the articling period as a recruitment device would seem on the increase.

Clearly there are other unknown variables involved in these findings, including the question of how many of those articling relationships not leading to employment were the result of the student being rejected by the firm, versus rejecting an offer from the firm. In either case, such occurrences would tend to deflate ratings assigned by the not-employed group.

	<u>Bar Ad Students</u>	<u>Practitioners</u>	
		<u>67-69</u>	<u>57-66</u>
Total permanently re-employed by articling firm	<u>47%</u>	<u>36%</u>	<u>30%</u>
Rated Articling excellent/good:			
employed	75	73	83
not employed	54	48	57

(See Table S-25, Appendix III.)

ii) Influence of size of firm:

The level of positive rating assigned was found to vary inversely by the size of the firm with whom Articles were taken; this holds among all sub-groups (except the 1957-66 practitioners, where both non-response and low incidence of articling with larger firms cause sample-size difficulties).

These findings may in part reflect a selection process in which better students go to larger firms, such students tending to be more critical. Beyond this it may reflect the advantages of personal rapport between student and principal

in smaller firms, vs. possible difficulties in the rotation through the various departments of the larger firms. (A cross-analysis of rating of principal by firm size could shed light on this question.)

Although articles provided by small firms are rated more highly than those given by larger firms, it may be noted that the employment trend is in the opposite direction. This may be due to the fact that 15+, and, especially, 30+ law firms were much less common a few years ago.

	Students		Practitioners ⁸	
	<u>Articling</u>	<u>Bar Ad.</u>	<u>67-69</u>	<u>57-66</u>
% Articled with firm 15+ lawyers	<u>33</u>	<u>30</u>	<u>27</u>	<u>8</u>
Rated Articling excellent/good:				
1-4 lawyers in Arti- cling firm	72	69	65	68
5-15 " " "	66	64	62	70
Over 15 " "	55	58	40	67

(See Table S-26, Appendix III.)

iii) Influence of location of Articling:

Since the majority of students articulated in their city of residence, the remaining sample of those who moved to article provides a slim base by which to judge the influence of this variable.

⁸ High non-response, and small number articling with 15+ firms cause sample-size difficulties with this group.

Statistically speaking, there is no clear-cut pattern to indicate that this was any more than a marginal factor.

	Students		Pract.
	<u>Articling</u>	<u>Bar Ad.</u>	<u>67-69</u>
% Articled in city of residence	<u>69</u>	<u>71</u>	<u>75</u>
Of those who rated Articling excellent/good:			
% Articling in resident city	66	71	57
Articling ex resident city	60	50	55

(See Table S-27, Appendix III.)

iv) Influence of negativism toward post-LL.B. training

The question here is whether rating of Articling is being influenced by a negative posture toward post-LL.B. training as an entity. As indicated by Bar Admission students' and recent graduates' ratings of the Bar Admission course, there appears to be little detectable influence of this nature. The ratio of positive to negative ratings for the Articling period held constant regardless of the rating assigned to the Bar Admission course.

(See Table S-28, Appendix III.)

v) Influence of income

This analysis was done only for practitioners to determine whether post-educational performance, as measured by attained income, had any apparent causal relationship with the practitioner's

view toward Articling. No significant correlation was found among the 1957-66 practitioner group analyzed.

One point worth noting is the tendency for non-response to increase significantly with income. The increasing non-response bears a reciprocal relationship with the fair/poor rating. Whether those of higher earning power are less interested in educational processes, more tactful, or are simply too busy to complete the questionnaire, is not clear.

<u>Articling rating:</u>	<u>Practitioners 1957-66</u>
<u>Income under \$15,000</u>	<u>(#41)</u>
Excellent/good	59%
Fair/poor	32%
Not stated	9%
 <u>Income \$15,000 - \$29,999</u>	 <u>(#138)</u>
Excellent/good	51%
Fair/poor	22%
Not stated	27%
 <u>Income \$30,000 & over</u>	 <u>(#39)</u>
Excellent/good	51%
Fair/poor	10%
Not stated	39%

(See Table S-29, Appendix III.)

D. Attitudes Toward the Bar Admission Course

1) Rating of Bar Admission Course

A rating system was employed here comparable to that for Articling; groups with no Bar Admission experience were excluded (Articling students and pre-1957 practitioners).

Generally speaking, the rating levels assigned to the teaching period were identical to those for Articling. The only exception occurred in the proportional "poor" rating assigned by Bar Admission students, apparently somewhat more critical of their more recent experience with the Bar Admission course than with Articling.

Rating of:	Students		Practitioners			
	Bar Ad.	Art.	67-69		57-66	
			Bar Ad.	Art.	Bar Ad.	Art.
% rating: Excellent/good	62	64	60	57	51	51
% rating: Poor	17	9	16	17	7	9

(See Tables S-19, S-29, Appendix III.)

2. Reasons Given for Ratings

The main reason given in support of positive rating was similar in nature to that for Articling--its contribution to the practical side of legal education. Supportive reasons were its rounding out of earlier gaps in knowledge, and its provision of useful material for future reference. By far the most serious criticism concerned the nature of teaching--described as "dull," "too compacted," suggestive of a "cram" course.⁹

(See Table S-30, Appendix III.)

⁹Of the 38 per cent of Bar Ad students giving the teaching period a fair/poor rating, 97 per cent volunteered "dull, cram course" as one criticism. As law school enrolment pressures result in a rapid upgrading of the academic quality of students, this problem of the teaching period being found dull will become more acute.

Among four specific attributes rated, the one valued most highly among all sub-groups concerned the documents and notes made available in the process of taking the Course. By comparison, the teaching and examination aspects were rated in significantly less positive fashion.

		<u>Practitioners</u>			
	<u>Bar Ad</u> <u>Students</u>	<u>67-69</u>		<u>57-66</u>	
% Rated:					
Excellent/good (poor in brackets)					
Value of documents	89 (3)	90 (2)	66 (1)		
Method of instruction	52 (17)	47 (21)	46 (7)		
Quality of teaching	49 (13)	50 (12)	42 (5)		
System of examination	27 (34)	27 (35)	30 (19)		

(See Table S-31, Appendix III.)

The same question of length was asked about the Bar Ad Course as for Articling. Although a sizeable minority of Bar Ad students and recent graduates do criticize the Course as being too long, the feelings on this point are significantly less than was found for Articling. Aside from the obvious fact that the Course is shorter than the Articling period, this is perhaps not surprising in light of the criticism, noted earlier, that Bar Ad is already too "crammed" with work for the available time.

	<u>Bar Ad. Students</u>	<u>Practitioners</u> <u>1967-69</u>
% rating "too long"		
Bar Ad.	30	25
Articling	56	53

(See Table S-32. Appendix III.)

The question of whether the Bar Ad Course curriculum should be mandatory or optional in content yielded answers similar to educators insofar as a fully-optional curriculum was concerned. Both student groups rejected the idea of a fully-optional course, as did recent graduates. The leaning was toward a combination of both, reflecting in part the desire for more opportunity to specialize, reported earlier.¹⁰

% preferred:	<u>Students</u>		<u>Practitioners</u>	<u>Educators</u>	
	<u>Articling</u>	<u>Bar Ad.</u>	<u>67-69</u>	<u>Prof.</u>	<u>Inst.</u>
all mandatory	33	43	40	32	58
all optional	11	8	8	10	2
combination	<u>55</u>	<u>48</u>	<u>50</u>	<u>36</u>	<u>38</u>
total "some"					
optional	66	56	58	46	40

(See Table S-33, Appendix III.)

¹⁰ It should be noted that none of the students experienced the new fully-optional 2nd and 3rd year LL.B. program (whose first graduates will be in 1971), and they were not accustomed to fully-optional legal courses. If this same question were to be asked of Articling and Bar Ad students, two or three years from now, the responses would probably be very different, as moving from an all-option system in Law School to a no-option system in the Bar Ad course for this group, may appear as a retrograde step.

3. Degree of Variation in Rating

As noted above, there is a considerable range of values assigned to the four attributes evaluated for the Bar Ad, a finding also true of the attributes rated for Articling.

Whether there is more or less variance within the two processes is difficult to determine, since the attributes rated differ. And as noted earlier with respect to "Seminars" in the Articling section, not all attributes selected are necessarily of equal importance or relevance to the respective parts of post-LL.B. training.

Some gauge of this has been attempted by examining the ratings each of the two student groups gave to the process in which they were currently engaged. The arithmetic for this was to assign values from +2 down to -2 for each level of rating (excellent through poor), to calculate the resulting gross points, and to subtract the negative totals from the positive totals.

The result as shown below as a weighted net rating index suggests a slight variance in the range between the highest and lowest rated attribute for the two processes. If the "Seminar" rating for Articling were excluded (on the basis of limited relevance), there appears a substantially greater variance in attribute ratings for Bar Ad than for Articling,

despite the fact that the former constitutes centralized instruction, while the latter does not.

<u>Attributes</u>	<u>The Bar Ad. Course</u> <u>(Bar Ad. Students)</u>		
	<u>% Excell.</u>	<u>% Poor</u>	<u>Weighted</u> <u>Index</u>
Documents & notes provided	56	3	+132
Methods of instruction	11	17	+ 1
Teaching quality	10	13	- 1
Exam system	3	34	- 77

Range of variation: 209

<u>Attributes</u>	<u>The Articling Period</u> <u>(Articling Students)</u>		
	<u>% Excell.</u>	<u>% Poor</u>	<u>Weighted</u> <u>Index</u>
Breadth of exposure	25	12	+ 45
Specialization opportunity	26	19	+ 18
Principal's time	21	21	- 2
Tasks assigned	24	13	+ 31
Coverage of guidelines	9	25	- 34
Seminars	6	60	-113

Range of variation:
incl. seminars: 158
excl. seminars: 79

4. Factors Influencing Rating

The overall rating for the Bar Admission Course was analyzed in terms of possible causal factors from two points of view.

i) Influence of city of residence

The hypothesis here was that the fact of moving might have a depreciating effect on overall attitude toward the course.

Approximately half the Bar Ad students and recent graduates indicated taking the Course in their resident city - some measure of the proportion being required to move or to commute, in order to take the Bar Ad Course.

As for Articling, there is no clear indication that place of residence is a significant factor. In the case of Bar Ad students, there was no difference in rating. For recent graduates, there was a difference, but in a direction refuting the original hypothesis.

	Bar Ad. Students	Practitioners 1967-69
% taking Bar Ad. course in ¹¹ "resident" city	55	57
% of those rating course excellent/good: took in "resident" city ¹¹ moved to take B.A.C.	62 60	53 73

(See Table S-34, Appendix III.)

ii) Influence of income on ratings

Among the 1957-66 practitioner group, the question of variation in rating by income levels produced different results from those shown for Articling. Whereas ratings for Articling did not vary by income, Bar Ad did, in inverse relation to income level. Apparently the nature of the Course has greater appeal to those who after graduation have lesser monetary achievement; or perhaps its method of presentation

¹¹These were the Toronto students.

and instruction has less value to those who subsequently do well in the real world.

	<u>Practitioners 57-66</u>		
	<u>under 15000</u>	<u>15-29999</u>	<u>30000 +</u>
% rating excellent/good	66	54	31

(See Table S-29, Appendix III.)

E. Practitioners' Attitudes Toward Three Methods of Admission to Practice, as Expressed by Preferences and Monetary Estimates

The two senior practitioner groups (1957-66 and pre-1957) were asked to provide estimates of practitioners' average salary accruing under three conditions of admission to practice. These have been described earlier in the context of preferences for the alternatives, described as:

- i) Current: LL.B. plus Articling, plus Bar Ad Course
- ii) Alternative A: immediate Bar exam following LL.B.
- iii) Alternative B: LL.B. plus one year combined Articling and Bar Ad. Course.

Both of the alternatives were positioned as options available to a prospective candidate, in addition to current requirements. It was also assumed in the positioning statement that a "significant" proportion of candidates took one option or the other, to the extent of 10-20 per cent of students. They were also asked which option they themselves would prefer if now graduating from law school.

1. Preferences

Results on a preference basis for the practitioners reflected an increasing tendency to retain the current system, the farther the group was from the time of entering practice; all three rejected Alternative A; Alternative B was the first preference of the younger groups.

<u>Preference %</u>	<u>Practitioners</u>		
	<u>67-69</u>	<u>57-66</u>	<u>pre-1957</u>
Current system	25	35	51
Alternative A	4	7	4
Alternative B	56	48	12
Not stated	15	10	33

(See Table S-18, Appendix III.)

2. Monetary Estimates

Although the 1957-66 Practitioners chose Alternative B over the Current System by a significant margin, in the income question this group gave their preferred alternative lower average salary estimates than the Current System. This suggests that the 1957-66 practitioners group (almost all of who have passed through the Current System) would be willing to accept a somewhat lower starting salary (on average about \$354 per annum lower, by their own estimates) in return for the opportunity of beginning practice some 6-9 months sooner. Obviously this is a rational choice, as 6-9 months' salary will undoubtedly exceed \$354.¹² Pre-1957 practitioners (none

¹² 1967-69 practitioners were not asked to estimate income because of problems of questionnaire length and possible unfamiliarity with lawyers' income levels.

of whom have personally experienced the Current System) gave it preference to the other two alternatives, both as a personal choice, as noted above, and in terms of starting salary estimates.¹³ This choice cannot be considered rational (at least not financially), as the 6-9 months' salary gained in Alternative B would be considerably greater than the \$475 average starting salary differential they estimated.

<u>Starting Salaries Under</u>	<u>Practitioners' Estimates</u>	
	<u>1957-66</u>	<u>Pre-1957</u>
Current System	\$8,680	\$8,349
Alternative "A"	\$7,337	\$6,813
(Diff.vs.Current System)	(\$-1,343)	(\$-1,536)
Alternative "B"	\$8,326	\$7,874
(Diff.vs. Current System)	(\$-364)	(\$-475)

(See Table S-35, Appendix III and the Benefit Calculations in Tables E-1, E-2 in Appendix II.)

¹³In evaluating estimates it should be noted that the response rate to this question was particularly low for the pre-1957 group.

3. Reconciliation of Monetary Estimates with Preferences and Ratings

As described in the previous chapter, the monetary benefits of post-LL.B. training, as estimated by both of the senior practitioner groups, were negative. Yet most 1957-66 practitioners rated both Articling and the Bar Ad Course excellent or good; both groups stated that in length of time the two phases were "about right," and both overwhelmingly rejected Alternative A, the immediate exam after the LL.B. Can this apparent contradiction be explained?

First it might be suggested that the practitioners did not intend to indicate that the longer the post-LL.B. training process, the greater the economic loss to the student; they were not asked this question directly, but were merely requested to estimate salaries under the three alternatives, at three points in time. It is true that the respondents could not anticipate the calculations which were to be made from their estimates, but it is unlikely that these estimates could honestly have been changed much had the ultimate purpose been known. Salaries under the Current System are fairly well known to practitioners, and not controversial. Alternative B represents a reduction in the Current program by only six months, and the salary drop indicated is

accordingly small. Alternative A may be more difficult to estimate, but the results suggest that practitioners inserted the amount they would be willing to pay an LL.B. graduate just out of law school--82-85 per cent of what the Bar Ad graduate receives at present. The negative benefit comes from a factor which the respondents were not asked to consider--the time lag between starting points. For example, the Alternative A student is earning \$10,538 after two years, when the Current System graduate is just beginning, at \$8,680. As the benefits of the Bar Ad training are the greatest immediately upon graduation (and decline thereafter), it is quite reasonable that the salary estimates show that the Current System graduate does not narrow the income gap with the earlier graduating Alternative A student. (See Table E-3 in Appendix III.)

Secondly, practitioners are not accustomed to thinking about the economics of post-LL.B. training from the viewpoint of the student. Had they been asked directly whether or not post-LL.B. education had positive or negative economic benefits, either the non-response rate would have been even higher, or the majority of responses would have been "gut reaction."

Thirdly, it must be noted again that the economics portion of the study does not consider non-monetary benefits; it is possible that practitioners felt that the educational and

attitudinal values communicated to the student during the Bar Ad Course were inadequately compensated financially.

It is also important that the cost-benefit analysis assumed all the monetary benefits to be exclusively in the form of salary to the student. As some practitioners stated that firms lost money on students, others that the recruiting value offset this loss, and a third group, that students were a source of profit, the middle position--breakeven--was taken as the most reasonable assumption. However, some practitioners, when asked which of the three alternatives to practice they would prefer, might have been influenced by the economic benefit, to themselves, of an articling student. On the other hand, even those lawyers who believed that they lost money on articling students would tend to favour a lengthier program over a shorter one, both because of recruiting value and because at least it may save the firm some initial training cost.

Finally, there may be an intangible psychological benefit to the practitioner in a longer student training program, as it tends to enhance the prestige of the profession; the lengthier and more arduous the apprenticeship, the more the work of that profession will appear to be challenging and complex. The resulting elevation in the apparent sophistication of the profession will be reflected onto every individual member. As there is an understandable inclination in every

business or profession for the incumbents to exaggerate the difficulty of much of the work they actually do, the potential ego benefits to the practitioner may create pressures toward longer educational prerequisites to admission to the profession. Evidence that practitioners do not hold legal education per se in high regard is provided by the relatively weak and superficial continuing education programs which practitioners have created for themselves.

Thus practitioners' own self-interest in economic, recruiting and ego terms, may have influenced the highly positive attitudes expressed toward the longest of the three suggested alternative proposals for admission to practice.

4. Verbatim Comments

Because the tabulation of numbers of responses to questions provides essentially quantitative information re questions which the researchers considered important, the inclusion of verbatim comments to open-ended questions can add a qualitative dimension. The responses quoted in Appendix IV, are not intended to be a representative, randomly-selected cross-section. Particular comments were selected because it was felt that they articulated some aspect especially well.

Some of the comments may appear unduly candid or excessively critical. However, to air even harsh reactions has the benefit of taking the discussion of legal education beyond the polite, well-mannered discourse (which is the forte of the legal profession) to what lawyers, educators and students really think in the unguarded moment of freedom provided by the anonymity and spontaneity of a questionnaire.

F. A Brief Overview of Survey Findings

In summarizing results of this survey, it must be emphasized that the three study groups, educators, students and practitioners, represent distinctly different backgrounds and perspectives on the subject of Ontario legal education.

These differences hold, not only between the reference groups, but within them as well. Hence, for example:

- While both types of educators tended to be young, the Bar Ad instructor was educated in Ontario but the law professor received his highest law degree outside Canada.

- Only half the professors had direct experience in legal practice, even smaller proportions having been through a Bar Admission Course or Articling process.

- Many of the older practitioners received their legal education under a quite different (and shorter) requirement than currently exists in Ontario.

The following points should not, therefore, be taken as a consensus, uniformly reflected in all sub-groups. In particular, older practitioners appear much less concerned with those changes indicated among other groups.

a) A general shortening in the time required for admission to practice is indicated. While time is the mode of expression used, many respondents also reflected a need for greater integration among various parts of the educational process.

2. Although the evidence supports a contraction, this is not meant to imply that removal of post-LL.B. education would be endorsed by the profession. The fact that value is attributed to the post-L.L.B. period is indicated in at least three ways:

- a) concept premised on immediate examination following LL.B. received lowest acceptance among three alternatives;
- b) points assigned to Bar Ad/Articling, as an educational experience, were by no means nominal relative to the LL.B. or early vocational experience;
- c) There is some evidence that the Articling period serves as a recruitment device for legal firms. Both the incidence of employing Articling candidates, and that of new practitioners associating with an established firm, vs. their own practice, would appear to be increasing.

3. On the issue of duration, it is the Articling period that is most criticized.

4. A majority rated their Articling experience in positive fashion. It was recognized as an introduction to the practical side of the profession, but criticized for too much emphasis on "menial" tasks, insufficient time spent with the principal,

and narrowness of exposure.

5. Although majority proportions of those recently experiencing Articling consider it too long, length of itself does not appear to have a causal relationship to rating. More significant factors here are whether the candidate was subsequently employed by the firm and the size of the Articling firm. On this point smaller firms appear to have provided a better Articling environment than larger firms.

6. The Bar Ad Course, as with Articling, was rated positively by a majority. Its practical utility, and particularly the value of documents and notes provided, were the main benefits. It was criticized for "dull" teaching, and lecture/examination systems suggestive of a cram course.

7. Among practitioners, the Bar Ad course is valued least among those who have the highest monetary achievement. Strictly in terms of monetary considerations, an inference here is that the Course is seen more as an "admission ticket" than a contributor to later success.

8. Three findings suggest a perceived need for greater opportunity to obtain specialized training.

a) Half or more of practitioners indicated they consider themselves to be specializing to the extent of 50 per cent or more of their time. The expectations of students indicate as much or more specialization.

b) While a completely optional curriculum in the Bar Ad Course was not indicated, there was a leaning away from the fully mandatory system currently practiced.

The need for opportunity to specialize was a secondary point volunteered by all sub-groups, as an area in need of improvement in legal education.

A final point for consideration is the relevance of respondents' views to the decision to retain, contract or abolish either of the two phases of post-LL.B. training. The formulation of a new legal education curriculum for contemporary needs clearly involves a highly-complex series of weightings--benefits against costs--of educational values, economic considerations (social and private), specialization, and the need for legal services of various segments of the public. This kind of decision-making is difficult and time-consuming, necessitating a great deal of discussion and compromise. On the other hand, response to a questionnaire tends to be spontaneous, and therefore, superficial, particularly if the survey is conducted before any considerable public debate. This "off the cuff" quality of questionnaires is at the same time their greatest weakness and their greatest strength.

If each of the respondents had spent several days or weeks collecting data and thinking about such questions as "do you think articling is too long?" to the extent of asking "what

is too long?," or "too long in relation to what?," then each questionnaire returned would be a reasoned decision, to be weighed seriously in any final decision about legal education. Obviously this was not what happened; nor was it the intention of the survey in mailing out some 2,700 questionnaires to obtain the considered opinions of that number of expert consultants on legal education. Only first impressions were sought, and received. It follows, then, that the spontaneous views expressed by several hundred respondents combined are no more "expert" or reasoned than the opinion of any particular respondent. This is not to suggest that these views are irrelevant or unimportant; on the contrary, they are significant "facts"--in the broadest sense of the word--and all the available facts must be considered in arriving at any decision. There are, of course, several other kinds of facts needed to plan a legal curriculum, some of which are contained elsewhere in this study.

While indirectly relevant to the ultimate decision, the opinions of students, educators and practitioners are material only to the determination of the question "what did the various groups think of the process, and why?"

Merely because one group (to continue with the example used above) thought articling was too long or too short does not mean that articling is actually too long or too short. That is another question, which would have to be determined in relation to the objectives of articling, and the alternatives to the present articling program. The same reasoning would apply to all the aspects of legal education on which respondents' views were solicited.

V. The Ethical and Cultural Aspects of Legal Education -
Socialization and the Transmission of Values and
Attitudes

Socialization was defined in Chapter I as: "to adjust or to make fit for co-operative group living." This chapter attempts to determine which group the law student is being prepared to live with through the different phases of his legal education, and what "adjustments" are made to his attitudes in the process.

It is not suggested, of course, that law students are totally malleable, passive objects, indiscriminately absorbing the views presented to them; on the contrary, many rebel against the proffered wisdoms and form attitudes which are opposite to what the respective educator groups were attempting to inculcate. Nor is it true that law students are culturally and attitudinally a homogeneous group. Therefore, the description of the effects of the socialization process will convey what is attempted, without necessarily being determinative of how much is actually communicated or absorbed; moreover, the effects will vary greatly with the individual student.

Because of budgetary and timing limitations, the scope of the empirical portion of this study was restricted to the economics of post-LL.B. training, and to attitudes

toward the process. No direct measures of cultural transmission were made.¹ However, some sixteen formal interviews were conducted with officers of the Law Society and Deans of Law, as well as numerous informal discussions with professors, students and practitioners; also, some library research was conducted on the writings of the two educator groups to obtain impressions of their modes of thinking (a Bibliography is included as Chapter X). Although a transcript of the interviews has been filed with the Commission, as anonymity was one of the conditions to being granted candid interviews, none of the interviewees' names are given in connection with quotations from their interviews.

The socialization of the law student is not a simple linear process through the three phases of his training; rather, it is a complex, circular interaction of three interdependent variables: the kind of student entering law school, the types of instructors he encounters, and the beliefs that both students and instructors have about the functions and attitudes of the practising profession.

¹It is hoped that other researchers will undertake long-term studies of this sort, e.g. attitudes toward the legal profession and practice upon entry to the Law School right after second year, after articling, after the Bar Ad course, and at the end of two years of practice.

Professor Harry Arthurs of Osgoode Hall Law School, a student of Legal Education, described the first of these interactions in an article:

... if legal practice is thought to consist of highly-paid, but routine work of little intellectual substance, on behalf of a small and well-to-do clientele, law schools will attract --and the profession will ultimately receive-- recruits who are content to pursue this kind of career. If, on the contrary, the legal profession is seen to offer challenges to the intellect and gratification to the social conscience, it will attract a different kind of recruit. Conceded, of course, that neither of these images is wholly accurate, it seems likely that whichever one attracts a student to the study of law may well determine his behaviour in law school... [including] the stimulating or dampening effect he has on the faculty... certain kinds of students will be attracted to or repelled by the study of law, depending on how lawyers are viewed; in turn, the type of students who enrol in the law schools will help to determine the configuration of its program.²

Whatever the student's reason for studying law, most of the Law School Deans were encountering a much different student. He was generally described as being more academically proficient, less accepting of the assumptions and values of the practicing bar, often more knowledgeable in economics or sociology than most law professors.

²H.W. Arthurs, "A Study of the Legal Profession in the Law School", Osgoode Hall Law Journal, Vol. 8, Book 2. Professor Arthurs teaches a seminar on the Legal Profession.

Although the students "at the top" were seen as being no better than ten years ago, the former "bottom" is now gone, and "the ranks are no longer thin after the top ten in the class." Law students are still predominantly upper- or middle-class in family background, although the uniform has changed from the three-piece suit to jeans and body-shirts. The amount of marijuana and hashish smoking is probably the same, proportionately, as it is in other university faculties.³ Many students grow beards in their first year, and at some schools, participate in community legal aid projects at the student level. (Some practitioners, when they come to law schools to conduct articling interviews, have been shocked by students' appearances. One exclaimed "How can I let our clients see these people!" Apparently the "generation gap" has just now reached the law school).

The background and attitudes of the law professors who teach "these people" are described in some detail in the previous chapter. Their verbatim comments to the questionnaire are included in Appendix IV. From these verbatim comments, some truth can be seen in Professor Graham Parker's remark (to his Osgoode Hall class) that

³The late comedian, Lenny Bruce, once jested that he was sure "pot" would be legalized before too long because all the law students he knew smoked it.

"... what is so surprising about this law school is that the faculty is more radical than the students," and the description could be applied to more than one of the province's law schools.

A few key statistics about Ontario's law professors will help to explain why they probably have few shared values with the practicing profession. The survey showed: 58 per cent have been teaching less than 5 years; 54 per cent obtained their last degree in the U.S. (32 per cent from Harvard and Yale); 90 per cent do not now carry on any outside practice; 42 per cent have not articulated (anywhere); 74 per cent have not taken a Bar Admission Course; 28 per cent are under 30 years old, 48 per cent in the 30-39 age group. With the exception of a handful of part-time teachers, all professors, by their choice of teaching law as opposed to practicing it, suggest a negative attitude toward practice. Whether they became teachers immediately upon obtaining the usual LL.M., or after a few years of practice; whether they found practice less stimulating or unconsciously feared lack of success or suitability as a practicing lawyer, the professor tends to appear in some ways more, but somehow in total, less than a full lawyer.

The law teacher has been aptly described as 'A Man Divided Against Himself.' Neither intellectual nor practitioner, but yearning to be both, he tends to take solace in being 'effective' as a teacher or a reformer.⁴

As law professors and students interact over the course of the three-year LL.B. program, despite the maturity of most students entering law school, many are strongly affected by the experience.

a) The LL.B. Period

During the LL.B. program, four attitudes appear to be communicated (with varying degrees of success):

1. Professionalism

Before anything else, the Socratic method of teaching in first year⁵ attempts to inculcate a fear of making hasty, ill-considered remarks, or indulging in glib rhetoric without adequate thought as to all the long-term implications and value choices involved. Although this technique is discontinued in the two upper years, the rewards throughout law school come from thorough research and fairly rigorous analysis. The superficial answer tends to be firmly put down.

⁴Arthurs, op.cit.

⁵Evaluated in detail in Chapter VII.

2. A Highly Critical Attitude Toward Courts

In many countries the leading members of the judiciary are closely related to the teaching of law, and write practical commentaries or theoretical texts which are widely read. This is true in much of Europe and the U.S. (and also in the province of Quebec, in Civil Law matters). The judgements of these men tend to be frequently cited and greatly respected. With very few exceptions, English-Canadian judges have failed to reach a comparable stature, even in the Supreme Court of Canada.

Whether justified or not, law schools communicate an attitude which, outside the immunity of the school, would probably be a contempt of court. Supreme Court of Canada judgements have been mocked as "another typical paste-and-scissors job." A relatively moderate professor concluded:

In fact, common law judging in Canada has truly been a wasteland of arid legalism, one that is only beginning to be relieved by a profounder vision of the scope of judicial action.... Perhaps the proposal for a Canadian Bill of Rights should await the advent of judges who are products of a different legal education.⁶

Such viewpoints are likely to provide a shock to the student who entered law school with visions of courtroom victories before benign, sophisticated judges who were

⁶ Paul Weiler, "Two Models of Judicial Decision-Making," (1968), 46 Can. Bar Rev., 406 at 471.

always quick to penetrate the legal sham to arrive at the "true justice of the case." Even the more realistic student is likely to become apprehensive about a career in litigation.

3. Americanization

As mentioned earlier, Canadian jurisprudential writing has been almost entirely conducted by law professors (we have yet to generate a Canadian Holmes or Cardozo). Because Canadian legal development has tended to lag behind the American, since many of our law professors received their highest legal training in the U.S., there has been an increased advocacy of U.S. solutions to contemporary Canadian legal problems. In many law school courses, after a survey of the Anglo-Canadian law, when the "where do we go from here" stage is reached, the tendency is to look to the U.S. Since there is seldom enough time to analyze critically the U.S. solution as well, the student is often left with the impression that the direction of most legal reforms can be found in the U.S. Continual reference to the Uniform Commercial Code, for example, communicates an attitude of great respect for American solutions. While U.S. law is undoubtedly relevant to Canada (even though Canadian courts rarely accept American decisions as precedents), if the American "is" is too often depicted as the Canadian "ought," this can have a stultifying

effect on both students' imaginations and legal scholarship.

4. A Critical and Fearful Attitude Toward
The Legal Profession and the Law Society.

The verbatim comments of law professors give some indication of this attitude. While enthusiastic about the new curriculum, many law professors have been slow to forget the events of 1949 (described in detail in Chapter VI) which led to the resignation of the late Caesar Wright as Dean of Osgoode Hall Law School and the evolution of a rival law school at the University of Toronto. Some professors have openly expressed the fear of a "backlash" to the new curriculum when practitioners find that some of their new articling students "don't even know the rule in Shelley's case," and what is perhaps worse, don't really care.

Many professors disparage legal practitioners, accusing them of featherbedding, doing menial clerical work, being unimaginative or anti-intellectual. The most serious accusation, however, is that lawyers are concerned only with "making a buck." The following comments were made not by a law professor but by a former practitioner now in government; they are included because law professors very often say much the same:

Some of us seem to be deliberately seeking profit from human misery. Just think of the routine everyday tasks that many of us perform--such as figuring ways to discover loopholes, and to get around corporate tax laws, or drawing up contracts that protect the sale of shoddy, sub-standard goods, or pocketing brokerage fees on second mortgages at usurer's rates which are sometimes guaranteed to see someone ultimately dispossessed of what he has tried hard to hold. Do we really feel good about these things? ... it's about time our profession changed a little and concentrated more on relieving human suffering than causing it...

I suggest that the law in Canada, for many of today's lawyers, has become a sham--as well as a shame to those outside the profession. I contend that instead of practicing law to defend the weaker members of our society from exploitation, instead of conceiving of the law as a bulwark against the rule of the jungle, many of us are using law to enable the rich to get richer, and the corrupt to become more powerful.⁷

It would not be surprising if many of the more idealistic law students began to wonder how they could ever adjust to the legal profession; whether they had chosen the wrong career. However, the profession gets the last word via the Bar Admission course, and if the student finds that much of the criticism of the profession was exaggerated (or perhaps based on the professor's own feelings of inadequacy), in the long run this may tend to diminish the law professor's credibility.

⁷ The Honourable John Munro, in a speech reprinted in Obiter Dicta, Vol. XLII, No. 3.

As a general indicator of the socializing effect of the law school, in the long run,

The degree to which attitudes nurtured in law school will survive in a sometimes uncongenial professional atmosphere is the ultimate measure of our pedagogic effectiveness.⁸

In summary, if the law schools succeed in communicating their values to the students, many will absorb attitudes in sharp conflict with those of the profession. This renders them at least temporarily maladjusted to their long-run environment. There are presently very few jobs for lawyers in those avant-garde fields glorified at the law schools. And the schools do nothing to ease the student's adjustment. The professors can justify this because they believe that they are "right" and the profession "wrong," this being their way of reforming it. Unfortunately, all too often the student bears the brunt of this reforming zeal. By the end of the LL.B. program (or until he begins, in third year, to be influenced by the imminent reality of practice), the student is best adjusted to live harmoniously in a law school environment. Professor Arthurs warns of the dangers:

If successive generations of new model lawyers were to find that they had to divest themselves of what they learned in law schools, pressures would inevitably mount for a return to the kind of law

⁸H. W. Arthurs, op.cit.

school curriculum which was devoted to turning out old model lawyers... the risk that [new model lawyers] may be frustrated by the profession is the potential Achilles' heel of contemporary legal education.⁹

b) Articling

Because of the extreme variations in articling experience, generalizations about the attitudes conveyed are very difficult to make.

The influence of the Bar actually begins at the end of second year, when students start the search for articling jobs. Rumours about law firms abound: "X-firm won't hire any Jews" or "Y-firm won't even see you unless your marks were in the top ten." Beards are shaved off, hair is cut to a more conservative length, and a dark "interview" suit is either purchased or taken out of mothballs.

It is widely agreed that the legal profession is still in its infancy in methods of personnel selection. Neither the practitioner nor the student has had any real experience with interviews; neither knows what to ask the other. There are no personnel or placement services dealing with lawyers. Many articling interviews last from 20-30 minutes, and are singularly uninformative. The major (though not exclusive) criterion is the student's grade averages in first and second year.

⁹H.W. Arthurs, op.cit.

While this may open doors for a top student, it can be a degrading process for the many who ranked from 100th down, in a class of 200 or 250 students. Although ranking was officially abolished in some law schools this year (for all but the honours students), being "unranked" is now an indicator too; in any case, firms still ask for marks and courses taken, if ranks are unavailable. Many firms want to be reassured that the student did not "waste his time with airy-fairy sociology courses."

Before the student even begins his third year--supposedly the year of specialization--he is acutely aware of the profession's view of the utility of his courses. Often there is a last-minute effort to get out of such courses as Consumer Law and into something more acceptable to the prospective employer. In effect, the message the student receives from the articling interview phase is sometimes:

Because you have to article, you need us a lot more than we need you. We have interviewed over 50 very good students in three days, and to us you are little more than a number--the number which corresponds to your marks.

After this sort of first contact with the "real world," it is understandable that the third year student--even one who has conscientiously taken all the "hard core"

courses in second year--feels somewhat apprehensive about indulging himself with a Law and Poverty or Control of Corporate Power course. He has already begun to doubt the practical relevance of much of the LL.B. period.

Probably the central values conveyed by the articling period are thoroughness (bordering on perfectionism) and pragmatism. The student realizes with a shock that a missed deadline or forgotten case can lose the client his action; an overlooked fact may cost a man's liberty. If a particular clause in a contract appears less than elegant, but has been upheld by the courts, it should be altered only with great caution. Although law school has tried to teach the student to see both sides of every question, the client is not interested in "on the one hand... but on the other hand" types of answers; he wants to know what he should do.

Thoroughness and pragmatism are communicated in the context of the lawyer-client relationship. A second, equally important relationship, that of principal to student, conveys another set of values.

Mr. Richard J. Roberts, Q.C., former Director of the Bar Admission Course (until June 1970), described the ideal in the "Student's Pocket Handbook" which articling students receive:

A close bond between a competent and conscientious solicitor, on the one hand, and a bright and willing student, on the other, is a most important part of effective practical training.¹⁰

The realities of the relationship, the pressures on both the student and the principal, are also outlined in the Handbook. The student is shown in several specific areas what he can do to improve the relationship,

... but if he gets no help in return, then it is up to him, and no one but him, to correct the situation.¹¹

The student is asked, at all times, to keep in mind "that his principal's first duty is to his clients."¹²

The attitude of at least some lawyers towards the articling relationship is that their second duty is to their pocketbooks. As a prominent Toronto lawyer puts it:

A law firm is a business, like any other business, and not a charitable foundation or an educational institution. While we take seriously the responsibility of all lawyers to train students, if we are going to invest time and money in a student, we have to get something in return.

Encountering this attitude will serve to reinforce some of the student's negative feelings toward the profession, which began in law school. A growing "credibility gap" between the reality of his experience and the official

¹⁰ Student's Pocket Handbook, p.2. This guide contains advice to the student and a checklist of useful things he should try to learn or be exposed to.

¹¹ Ibid, p.5.

¹² Ibid, p.5.

statements of the profession may develop. For example, Mr. Sydney L. Robins, Q.C., Chairman of the Legal Education Committee of the Law Society, describes articling as follows:

It has been a tradition of the legal profession in Ontario that part of the legal education of students-at-law should be by service under articles for a period of time in a law office. The importance of relating theory to practice, and of observing the proper conduct of a law practice, are essential if the high standards and dignity of the law as a profession are to be maintained....

The Law Society is anxious to ensure that future members of the profession will not only maintain its high standards and integrity but will be even better trained than their predecessors.¹³

Given the large number of complaints about the assignment of menial tasks (see Chapter IV, and Appendices III and IV), a problem of which the Law Society is very much aware, and given the relatively insignificant bargaining power of the student and his inability to have any meaningful control over his articling environment, it may appear somewhat less than consistent to talk about the Law Society's concern that future lawyers "maintain its high standards and integrity" in one breath, and to tell the student that "the sort of training a student receives is largely his own responsibility"¹⁴ in another.

¹³The Bar Admission Course Calendar, 1970, p. 3, 4.

¹⁴Student Handbook, p. 5.

This dichotomy between euphemistic descriptions and harsh realities can have an important socializing effect, even on those students who may have heard about the usual articling complaints from friends, but enjoyed their own articling experience.

Professor Lon Fuller discusses this problem in a study of the Pennsylvania system of articling conducted for the American Bar Association (The Pennsylvania system of "preceptorship" is a six-month clerkship, two months of which may be completed during summers before the end of law school; however, the aspect under discussion is sufficiently similar to Ontario that Professor Fuller's remarks are relevant to Ontario as well.):

The consensus among those acquainted with the actual operation of the system is that the preceptorship tends to be perfunctory. If it is in fact an empty form, then of course it does not produce the advantages claimed for it. Having the applicant and his preceptor fill out and file all the papers connected with the preceptorship, and having the State Board go through the motions of approving these papers represent a sheer waste of human energy.

If the relationship is entirely perfunctory and formal, the objection to it is not merely that it is wasteful but goes much deeper. It means that the student at the outset of his legal study is confronted with a pretentious and hypocritical piece of official routine that casts doubt on the sincerity of all the moral safeguards that surround his admission to the bar. It suggests to him that his chosen profession winks at half truths and is willing to dispense with the

spirit of compliance if something like the letter is observed. Surely such an introduction to the profession can scarcely be said to enrich the student's understanding of its moral obligations.¹⁵

While the profession's failure to "tell it like it is" and to control articling abuses may enhance the student's disillusionment with the profession, the retrospective evaluation of the law school may also be very harsh. His lowly status with the firm, his manifest lack of practical experience, and the principal's tendency to be unimpressed with his academic learning can make the student wonder why he spent three years of his life in law school. Law students may notice that medical schools produce doctors and dental schools graduate dentists, but law schools turn out "articled clerks." Granted that doctors and dentists receive some practical (clinical) training after their academic studies, this is controlled and run by a branch of the University. The very fact that the Law Society does not treat the university graduate in law as a fully-qualified professional can tend to denigrate

¹⁵Lon L. Fuller, Legal Education and Admissions to the Bar in Pennsylvania. Temp.L.Q.25:249-300, Jan.1952. Professor Fuller also sees preceptorship as influencing the kind of student available to be socialized: "By requiring the student to serve an apprenticeship that is unpaid, or virtually so, it raises still higher the financial barrier to entry into the legal profession." As the Economics portion of this study shows, Professor Fuller's comment applies a fortiori to Ontario.

the law school in the eyes of the student. The lack of immediate utility of much of what he learned there may lead the student to accept the practitioner's stereotype of the law professor as an irrelevant academic. During the last year of law school and the articling period, the student's model of the lawyer shifts from the law professor to the practitioner, and the exchange of the value system of the former to that of the latter begins. Professor Arthurs expresses the hope that:

Despite the 'unlearning' process, many of [students'] attitudes and values, acquired in law school, will survive their early years of socialization in the profession. Their numerical predominance will ensure that these attitudes and values gradually influence the official ideology of the profession.¹⁶

c) The Bar Admission Course Teaching Period.

One important difference between the socializing influence of the articling and teaching periods of the Course is that the articling principal is seen as being but one member of the legal profession (and perhaps not entirely representative of all lawyers), whereas the teaching period is under the direct control and management of the Law Society, the elected representatives of Ontario's legal profession. The attitudes conveyed during the latter period are therefore likely to be taken much more seriously, as they are, in a sense,

¹⁶Arthurs, op.cit.

"official attitudes." Because of this, and also because the Course gets in the last word, it is likely to be a most powerful socializing influence.

After the verbatim comments included in Appendix IV, the best indicators of the attitudes communicated by the Course are found in the Course curriculum and the official writing of the Law Society officers, especially in the Handbook and the Calendar. (An outline of the curriculum, with the length of time devoted to each subject, is found in the questionnaires, included as Appendix VI).

The most striking aspect of the teaching period is that it seems almost to be designed to counteract much of what was conveyed in law school. The law school curriculum (in the two upper years) consists entirely of optional courses, implying that the Law Society accepts the maturity of the student, and gives him the responsibility for selecting courses relevant to his intended practice; however, the entire thirteen courses in the Bar Ad Course are compulsory, suggesting (rightly or wrongly) that the student, one and a half years later, cannot be entrusted to make this choice.

The law schools stress the importance of a social conscience, even in the most "practical" courses such as

Property or Civil Procedure. They attempt to sensitize the student to the plight of the underdog--welfare recipients, Indians, Jehovah's Witnesses--to persuade him that every individual, through his lawyer, has the right to exercise his "one man lobby." Law schools are also very concerned with contemporary issues: tenant housing problems, equity in the tax system, pollution of the environment, the over-committed debtor. A good illustration of this is found in the Debtor-Creditor Relations course offered at most law schools. It is usually taught from the viewpoint of the debtor: how to set aside onerous clauses, the debtor's remedies afforded by various statutes, government counselling services, the need for and possible direction of law reform. The ethic communicated is that the important thing in this legal relationship is to help a rather powerless, often ignorant or foolish person, out of a legal mess when the law is heavily stacked against him. By way of contrast, the comparable course in the Bar Admission period is called Creditor's Rights. A portion of this course is described in the 1970 Calendar of the Bar Admission Course:

... the procedure to be followed on the receipt of a claim from the client is discussed; the issue of the writ and the signing of default judgement are reviewed. Various matters in connection with

the enforcement of judgements are dealt with including execution, exemptions from execution, sale of land under execution, examination of judgement debtors, examinations in aid of execution, garnishments....¹⁷

Of course, "the client" referred to here is the creditor, not the debtor. The message is not lost. Mr. Robins writes in the introduction to the Calendar that "the real objectives of the Course will only be achieved if its students are imbued with a sense of dedication to serve the public...."¹⁸ Apparently this "public" which the profession implies the student ought to serve is the paying public, i.e. creditors, who are usually retailers, mortgage companies, finance companies, banks, etc.

The curriculum itself is significant. Of a total of approximately 22 weeks of courses, three weeks are devoted to Real Estate, five to Civil Procedure, three to Corporation and Commercial Law, three to Estate Planning--but only one day can be spared for Legal Aid. As one of the professed objectives of the Course is to protect the public from inadequately trained or incompetent practitioners, which "public" the profession is concerned to protect is clearly communicated.

More important is the example set by the lawyers associated with the Course. Mr. Roberts, the former Director of the Course, put the matter this way:

¹⁷Op.cit., p.19

¹⁸Op.cit., p.5

The young are taught, as you know, by example. All through the course, we expose them to a great many good practitioners who are, at the same time, successful and ethical. We think these young lawyers-to-be absorb by osmosis the idea that honesty is indeed the best policy, from a purely pragmatic point of view. In addition to teaching indirectly by example, one week of the course is spent directly on legal ethics and professional conduct.¹⁹

As an example of such a practitioner, Mr. Roberts writes:

At the head of this course (Civil Procedure) is one of the leading counsel in town--within the last couple of weeks he obtained a judgement against one of our banks for over \$1 million. (It is too bad for him we do not work on contingent fees in our jurisdiction.)²⁰ He lectures to the whole class every morning.

How the profession actually behaves, of course, will be much more influential in communicating values than what lawyers tell students they do (or ought to do). The most vivid single illustration of this, from the student's viewpoint, is the way the profession treats the student himself during the Course. The failure over 12 years of the Course to be sufficiently concerned with student complaints to correct the Toronto-only location, the teaching method, the examination system, attendance taking, curriculum, etc. will tend to reinforce the student's impression (obtained

¹⁹R.J. Roberts, Q.C. "The Bar Admission Course in Ontario," *The Solicitors' Journal*, Vol. 109, p.751.

²⁰*Ibid.* Contingent fees are based on a percentage of the award, usually about one-third.

during articling), that the profession has very little concern for his happiness, so long as it can appear, to the outside world, to be carrying out to the letter its duty to protect the public from incompetents. While the "legal honesty" of the profession remains impeccable, its human kindness is less than favourably imparted.

The Course should give the impression that legal practice is a demanding challenge, requiring a great effort of the student to "attain the skill and knowledge which is expected of members of a learned profession." However, because of the teaching method and level of the Course, the contrary effect may be obtained, resulting perhaps in an unhealthy smugness. In the words of one graduate:

I was shown how to write the plaintiff's name on the form, on the dotted line where it says 'plaintiff.' I managed to remember this for two weeks until the exam. I got an "A" in the exam.

The feeling was that if these teachers were the best in the profession, and if this was all there was to the practice of law, that "... if that's the cream of the crop, then I've really got it made."

The ultimate purpose of such a course must be to leave the student with a healthy attitude toward himself, a growing confidence in his own ability and self-worth, and a feeling of respect for his hard-won professional credentials.

This involves treating the student with respect, and also, abstaining from disparaging reflections on the pre-Course phases of training. The Course would not appear to be successful in either of these.

The atmosphere of the course, the pressure, attendance-taking and lack of choice in courses hardly indicates respect for the student's integrity or intelligence. In an interview with one of the officers of the Law Society, when he was advised that this study would send questionnaires to Articling and Bar Ad students, the interviewee suggested:

Oh, you might as well not bother getting their views at this stage--wait until they have been out a couple of years. Right now they are too keyed up, so full of tension and anxiety, that all you will get are very biased opinions.

Another illustration of lack of respect for both the student and his training is found in the article by Mr. Roberts, cited above:

In a law school, a young man may study the various ways by which different legal systems make sure that a defendant gets to hear about the grievances a plaintiff has against him.... The young man should be encouraged to compare the alternative ways of initiating the proceeding and the safeguards against injustice that are built into each.... Then the practising bar comes along and says 'That's all very fine and large but in this jurisdiction, if you don't fill in this form with this information, and go to this court office to record what you're doing, and then

take a copy and stick it in the defendant's hand, you're never going to get your action off the ground. Work away to get the procedure changed if you like, young man, and I hope you will if you think you can improve it, but this is the procedure'.²¹

While the practical content of this statement is indisputable, the negative attitudinal factors are apparent. One notes a slightly patronizing tone: the "young man" being so solicitously advised is not a 19-year-old freshman but typically a 27-29-year-old, often a married man, sometimes with children of school age, in half the cases having been required to move to Toronto for six months to take the Course. Secondly, it would appear (from the Course content generally, as much as from the above statement), that the Bar is relatively unconcerned with law reform, taking a faintly amused, benevolent view of the "young man's" seemingly quixotic concern. Indirectly, this downgrades the value of the law school period. Admittedly the above is only one statement, but within the overall climate of the Course, as suggested also by questionnaire verbatims, it is probably not atypical of the attitude of the Bar toward students.

Finally, the socializing effect of the recruitment function of the Course should be examined. Many students

²¹R.J. Roberts, Q.C., Ibid.

are not employed by the firms with which they articulated, for a variety of reasons (including the desire not to expand on the part of some of the smaller firms). Because of the dual function of post-LL.B. training, as legal education and as a conduit to the employment market, the impression of "what lawyers' work is" that is communicated to students shapes the job market they see. For those students who seek employment during or after the Bar Ad Course (i.e. those not hired by their articling firms), the Course curriculum and staff operate as a channeling device, tending to direct the student away from many of those newer areas of law being taught at the law school. By placing him in daily contact with lawyers making a living acting for finance companies, not consumers' groups, for polluters, not anti-polluters, for developers, not citizen groups, for the police, not the civil liberties association, for landlords, not tenants--the Course focuses his perceived job opportunities onto these firms.

Ralph Nader, a very strong critic of legal education, discussing the socializing effect of the American law school, [the law school in the U.S. provides the entry to the job market, so these comments re law schools would apply to the Bar Ad Course in Ontario] wrote that the curriculum:

... reflected with remarkable fidelity the commercial demands of law firm practice. Law firm determinants of the contents of courses nurtured a colossal distortion of priorities, both as to the type of subject matter and the dimension of its treatment. What determined the curriculum was the legal interest that came with retainers.... Courses tracking the lucre and the prevailing ethos did not embrace any concept of professional sacrifice and service to the unrepresented poor or to public interests being crushed by private power. Such service was considered a proper concern of legal charity, to be dispensed by starved legal aid societies.

The generations of lawyers shaped by these schools in turn shaped the direction and quality of the legal system.

Possibly the greatest failure... was not to articulate a theory and practice of a just deployment of legal manpower.... Law firms were not even considered appropriate subjects of discussion and study in the curriculum. The legal profession--its organization, priorities and responsibilities--were taken as given. Rather, it serviced and supplied the firms with fresh manpower....²²

In conclusion, having regard to the important social, economic and political consequences of the socialization of a profession such as the legal profession, the negative attitudes communicated during all three phases of legal education (but particularly during the latter

²²Ralph Nader, "Law Schools and Law Firms: The Crumbling of the Old Order", The New Republic, article reprinted in Obiter Dicta, Vol. XLII, No. 15.

The Honourable John N. Turner suggested that the old law school curricula (or by implication, the present Bar Ad Course curriculum) could have been prepared by the local Chamber of Commerce (see the text of this address, included as Appendix V).

two, comprising the Bar Admission course), represent a non-monetary cost. In the law schools, the argument could be made that the negative feelings toward the Bench and the Bar are offset by the sense of idealism and justice conveyed; in any case, some of the negative attitudes, as well as the Americanization, can be largely "cured" during the Bar Ad Course. It would be more difficult to determine whether the attitudinal benefits of post-LL.B. training--thoroughness, pragmatism and legal ethics²³--offset the costs: reduced respect for "law school values" such as candour, idealism, public service, or law reform, and a diminished sense of self-respect and confidence.

However the socialization calculus is viewed, this value must be added to the economic cost or benefit in the overall determination of the value of post-LL.B. legal training. As mentioned at the conclusion of the cost-benefit chapter, a large non-monetary benefit will be necessary to offset the substantial negative economic values.

²³Which does not concern itself with legal morality in any broad sense, but professional conduct, including forceful injunctions against such breaches of the Canons of Ethics as advertising (e.g. exhibiting a sign with "Law Office" in letters over six inches in height) or stealing or "borrowing" from clients' trust funds.

VI. The Politics of Legal Education - Vested Interests¹ and Control of the Legal Education Process

A brief account of the history of the controversies in legal education in Ontario is essential to an understanding of the manner in which control of the process has been exercised. This history can best be described in two phases: pre-1957, and post-1957.

1. The Pre-1957 Phase

An exhaustive description of legal education in Ontario from 1800 to the present is found in the Osgoode Hall Law Journal of 1968², and forms the basis of this portion of the report. The starting date of the modern period would be about 1920. At that time only one law school existed in Ontario, Osgoode Hall.

Insufficient training, lack of work, and low income had driven much of the profession to a poor estate. To many observers the answer to this unfortunate situation lay in a new approach to legal education. Raise the standards of admission to law school, stiffen up the law school course, and you automatically cut down on the number of calls to the bar and raise the quality of those who are called. The fact that the medical profession, with its higher admission standards and higher educational requirements also enjoyed higher social prestige than the law was not lost on barristers.

¹This phrase is not used in the correct legal sense, but in the colloquial sense, as in the Commission's guideline.

²"Pedants, Practitioners and Prophets: Legal Education at Osgoode Hall to 1957", 6:2, Osgoode Hall Law Journal. Hereafter cited as OHLJ, 6:2.

There were, however, contrary viewpoints. Were improved standards (a requirement, for instance, that a university degree be a prerequisite to legal training) merely going to mean that the poor and not the unfit were barred from the law? Furthermore, as many of the province's finest senior partners could point out, a raising of academic standards might not be useful or even relevant in a profession whose most eminent members were trained by practical experience...

The particular areas of conflict tended to shift, often in response to economic conditions in the profession at large. Motives were mixed. Practitioners tended to confuse the upgrading of the legal profession with the limiting of legal competition...

By 1923 the Law School at Osgoode Hall was ripe for a number of reforms and they were not long in coming. The Legal Education Committee proved sympathetic to a reorganization of the law school and established a special committee on that very subject. This report, when presented to Convocation in March of 1924, indicated that a distinctly new attitude towards legal education was abroad. The School sessions were to be lengthened and the extra classes gained were to be used for an expanded treatment of the existing curriculum as well as a study of new subjects. The teaching staff was to be increased, most notably by a second full-time member, and the system of examination of the students by independent examiners appointed by the Law Society was to be discontinued. More significantly, the staff was encouraged to try new teaching methods. The Committee found that previously students had taken little share in their legal education and some were even passing examinations by virtue of "reading typewritten notes purchased from their predecessors!..."

This new spirit of freedom met with Convocation's approval. The recommendations of the report were adopted and Mr. Falconbridge was formally made Dean of the newly named school. As Dean he was given "supervision and general direction of the law school" but his decisions on curriculum and lecture hours and schedules were always "subject to the approval of the Legal Education Committee".³

³OHLJ, 6:2, p. 191-2.

During the remainder of the 1920s, the School continued to develop without major problems. However, in the 1930s, the business slump in the depression put severe strains on the legal profession, which found itself unable to afford to hire articling students on the earlier scale.

The Benchers' reaction to the distressing problems that faced them can be most kindly described as one of retrenchment. In 1934 a Special Committee of Benchers was appointed to investigate legal education. The creation of the Committee occasioned much interest and in the course of its sittings it heard a number of submissions.⁴

In the light of [this] chorus of pleas for constructive reform, the Benchers' Report seems incomprehensible. When first published it must have been shocking. The suggestions that the university degree be the standard of admission were set aside and the 1932 minimum standards retained. The Law School's approach to education was criticized. "The tendency has been to emphasize unduly the academic training at the expense of efficient office training." The Committee, whose chairman (M.L. Ludwig) had pronounced concurrent office service undesirable not three years earlier, recommended that afternoon lectures be reinstated so as to allow more time for office work. It was also suggested that the curriculum be shortened and the use of the case method re-examined...

To all outward appearances the progressive trend in legal education received a severe setback in 1934. The Committee's recommendations were duly implemented, students attended the Law School for an hour in the morning, went off to such work as they could find for the afternoon and (if they had the strength, and many students recall that

⁴Ibid, p. 196-7.

they did not) returned to the School for coffee in the common room and a lecture at 4.40...Little talk of educational reform is found in the subsequent years. The Canadian Bar Association ceases to note the topic in its proceedings; the Dean's annual reports to the Law Society are concise and perfunctory. It was almost ten years before a new impetus for change was to develop.⁵

This system continued throughout the 1930s and early 1940s. During this period Osgoode Hall continued to be the largest law school in Canada. Its reputation for quality, however, was considerably less than that of several other law schools, most notably Dalhousie.

With the coming of World War II, new problems arose. When the troops returned home they found that an excellent four-week refresher course had been set up as well as an informal "placement service" to help in finding jobs. The refresher lectures proved so popular that they were printed, and became widely used as practical tests. A form of these lectures continues to the present day in the annual Law Society Special Lectures.

The Law School itself did not stagnate in these years, either, despite its drastic drop in attendance. The Legal Education Committee report of 1935 had served to freeze the Law School curriculum by holding to two hours per day the number of lectures that could be given. The students were well aware of this handicap and realized that they were at a disadvantage in entering professional life with no training in such subjects as Municipal Law, Tax Law or the Succession Duty Act. They were also aware of the deficiencies of some of their teachers. It had been traditional for the Crown Attorney

⁵Ibid, p. 199-200.

of Toronto to lecture in criminal law but this left much to be desired...In short, the new impetus for reform had come.

The Legal Education Committee set up a [special] committee to study the Law School curriculum and Dean Falconbridge submitted a report to it in which the addition of new subjects was recommended. It was first of all essential, though, that the lecture hours be changed. Dean Falconbridge's submission to the Benchers on this point is one of the most forthright comments ever attributed to him:

'At a recent meeting of the Legal Education Committee I ventured to draw [the Law School] timetable to the Committee's attention and to recommend that the decision made ten years ago to limit the lectures to the hours of 9 a.m. and 4.40 p.m. should be reconsidered. I am not overlooking the importance of office practice as part of a student's training, but, as I explained to the Committee, I am convinced that the present limitation as to hours of lectures handicaps the law school work to such an extent as to constitute a major defect in the system of teaching law in Ontario'.

The irony, of course, was that in 1945 he was pleading again for a concession that he had won shortly after taking office in 1923. The concession was regained; the lecture hours returned to what they had been in 1934. New subjects were added to the curriculum; Taxation and Administrative Law in 1944 and Labour Law in 1945. The lecture hours rose from a total of 900 in 1944 to a total of 1044 in 1945.⁶

Three years later Dr. Falconbridge retired as Dean of the Law School, continuing as a professor of law and was succeeded as Dean by Cecil Wright. Wright's stormy tenure lasted for one year, ending with his resignation in 1949.

⁶Ibid, p. 204.

The 1949 resignation lifted the lid of discretion from a long simmering controversy between Dr. Wright and the Benchers. The ensuing struggle bathed Osgoode Hall in unwelcome and unflattering publicity, displayed all participants to their worst advantage, forced the evolution of the University of Toronto's tiny Faculty of Law into a major Law School and ultimately resulted in the first substantial reforms in Ontario legal education in over sixty years.⁷

Although personality conflicts and radically different life-styles were undoubtedly important factors, the Benchers and Dr. Wright also differed on some of the most fundamental values in legal education.

When the Law Society appointed yet another Special Committee on Legal Education in 1947, Dr. Wright appeared before it three times to give advice on a reorganization of the Law School. His proposal was that a full-time Law School with a full-time faculty be established and be given complete academic freedom. Dr. Wright had himself gone through the articling process and was aware of the advantages as well as the limitations of practical training. His recommendation on this subject was that a student's training in articles be completed through a one-year apprenticeship to a qualified barrister at the end of his academic studies. These proposals, of course, were hardly more startling than the 1938 statement of principles and Dr. Wright himself pointed out that they amounted to no more than a request that the Law Society implement the recommendations put before it by the Lawyers' Club of Toronto in 1923. Within ten years of being made, Wright's suggestions were to form the foundations of the province's system of legal education.⁸

⁷Ibid, p. 207

⁸Ibid, p. 210

While the Special Committee was conducting its study, Dr. Wright continued to speak and write vigorously attacking the "narrow professionalism that only wants to teach existing techniques."

The Special Committee reported on January 20, after a two-year study. Its recommendations were approved by the Law Society. The nine-point program was a return to the 1924 system, including more emphasis on "practical training," limitation of courses to 10 lectures a week, one each day at 9 a.m. and 4.10 p.m. Dr. Wright had not been notified of the proposals, either before or after their adoption, and first learned of them through the newspapers. Wright took this as a deliberate insult, and decided he had no choice but to resign. Professors Willis, Laskin and Edwards resigned with him, and in the following academic year, Professors Willis and Laskin went to the University of Toronto, Professor Edwards went into practice.

The widespread protest following Convocation's adoption of the nine-point program showed the Law Society that it was out of touch with many of its practising members. Thus, even though Dr. Wright was now in no position to oppose the program suggested for its Law School, the Law Society altered its

proposals so that almost nothing of the original nine points remained. In the end, the new plan was not very different from what Wright had proposed. The final program required two years of full-time attendance at Osgoode Hall, one year of articles, then a fourth year of concurrent articling and practical training.

The graduates of the University of Toronto law school were, of course, still required to go to Osgoode Hall for some time before admission to practice. It was decided by the Law Society that University of Toronto students would be admitted to Osgoode Hall's third year. But the University of Toronto Law School had a very complete, highly-regarded three-year program. The articling year was not objected to, but being required to return to Osgoode Hall for the fourth year was seen as insulting. It also meant that these students spent a total of five years before qualifying to practice, whereas Osgoode Hall students were allowed to practice after only four years. Many lawyers were critical of this discrimination.

The University of Toronto law students took the matter very seriously: they had, after all, gambled a year of their lives on the conviction that university legal education was the best preparation for a career in law. The controversy reached a rather bizarre climax on February 27, 1952, when University law students marched down University Avenue

with pickets and distributed handbills calling for equality of treatment.⁹

The press also seemed to treat the controversy as being very important, and gave it very widespread and perhaps somewhat sensational coverage.

The Law Society, with understandable but exasperating rigidity, refused to be persuaded by the press, moved by the students or hectored by Dean Wright. Some Benchers even suggested, with almost wilful blindness, that the fact that the University had enrolled a mere twenty students in its law course in 1952-53 indicated the unpopularity and deficiencies of degree courses in law. Some observers began to despair of the Law Society's ability to reform itself and called upon the legislature to "strip the Benchers of their monopolistic privileges."¹⁰

The majority of the students continued to come to Osgoode Hall, and by 1955 enrolment reached 670 students in attendance. The costs of the school were mounting, and as it was still classified as private, was not eligible for government grants. The Law Society did not have the necessary funds to afford the required expansion. Economic pressure finally produced what public pressure had been unable to achieve.

The new plan delegated the responsibility of the academic portion of the training to the province's several schools (although one academic law school remained at Osgoode Hall). At the same time a new

⁹Ibid, p. 226

¹⁰Ibid, p. 226

1.

wing was added to Osgoode Hall (completed in 1957).

While the physical plant was being expanded, talks were being held to work out the details of the new curriculum:

In January of 1955, a Special Committee was appointed by Mr. Carson, the Treasurer of the Law Society. This committee took charge of the planning of the new building but once the addition was safely under way it turned its hand to more significant matters. At the invitation of Mr. Carson the committee met on April 30th of the same year with executives of all Ontario colleges and universities and discussed in general terms the relationship of law to other academic disciplines. Soon more specific and significant work was being done in smaller committees. John Arnup, D. Park Jamieson and Dr. J.A. Corry of Queen's University addressed themselves to the problem of working out a relationship between university legal studies and the Law Society's power over admissions to the bar. Yet another committee, this time composed of H. Allan Leal, Dean Wright and Dr. Corry, set out to draft the requirements and standards to be demanded of University Law Schools in Ontario. [Dr. Corry]...acted as a catalyst for the sometimes incompatible and bitter parties to the negotiations. He is remembered by those who worked with him as a fountain of patience and persuasion; as the cement that held things together.

Early in 1957 Messrs. Arnup, Jamieson and Corry secluded themselves for two days in the Royal York Hotel and hammered the conclusions arrived at by years of separate consultations into a single program of reform. At the close of their session, Dr. Corry telephoned Dean Wright and outlined the proposals settled upon to him; Caesar was jubilant. When, a few days later, the students of the University's Law School learned of the reforms they gathered in the library of the school and cheered. The new plan for legal education in Ontario was adopted by the Law Society on February 15, 1957. On that day the voices that had for a

half century cried for reform were stilled and the ghosts of the 1949 debacle were exorcised. The standard of admission to Law School was made either a university degree or (out of deference to the length of time that the legal course itself took) successful completion of two years of a university course after senior matriculation. The academic legal course was made a three-year, full-time program which was to earn the student a law degree. All Ontario universities possessing adequate facilities and following an acceptable curriculum were to be able to offer fully recognized legal studies. Osgoode Hall itself was to become a government supported degree granting law school in no way favoured over any other Faculty of Law. The Law Society's duties with regard to certification for practice were discharged by requirement that every graduate article for one year upon completion of his studies and then take a six-month Bar Admission course prior to being made a barrister. Academic legal education had at long last come of age in Ontario.¹¹

2. The Post-1957 Phase

During the early 1960s the enrolment in law schools greatly increased, and as this wave reached the Bar Ad Course, Osgoode Hall again became too crowded with both the Course and the Law School in the same building. The affiliation of the Law School with York University in 1968 was the result.

During the 1960s, the composition of the Benchers also changed due to retirements and new elections, as did the membership in the powerful Legal Education Committee. Since 1957, relationships between the Law

¹¹Ibid, 228-9.

Society and the several law schools has steadily improved. The six law schools have created a Committee of Deans, of which Dean Soberman of Queen's University Faculty of Law is presently the Chairman.

In the interviews, all the Deans stated that they were satisfied with the new modus vivendi worked out with the Law Society. The Deans are now on a "first names basis" with the members of the Legal Education Committee, and considering that Committee members Messrs. Robins (L.E.C. Chairman), Estey, Maloney and Williston have all been part-time or full-time teachers of law at Osgoode Hall Law School, the description of the present relationship as "cordial" is not surprising.

An illustration of the working of this new spirit of co-operation is found in the way in which the new curriculum (with the optional 2nd and 3rd year courses) was adopted. In 1968, the Committee of Deans (chaired by Professor W.R. Lederman, then Dean of Queen's University Faculty of Law), submitted their curriculum proposals to the Law Society. After some time for study and discussion, the proposals were approved on March 21, 1969. The Deans all agreed that

these negotiations were carried on as equals---"we were by no means supplicants."

Throughout the 60s the Law Schools were busy with the erection of new buildings, soaring enrolments and the problem of finding the required number of new professors. Many of the professors hired were of necessity inexperienced (both as teachers and as practitioners). Ironically the students, who for decades had complained that the old law school was too practical, now began to demand more practicality in the curriculum. However, as the Ontario Law Students' Association has been a relatively weak, disorganized body, these criticisms of the Law School were never made very forcefully or in a concerted manner.

The traditional problems with articling have continued, as discussed in Chapter IV. Criticisms of the new Bar Admission Course began to be made; these are also documented elsewhere in this report. At the same time it was increasingly felt that the total program, in effect five years, was too long, and it was unfair to require about half the students to move to Toronto to take the teaching period. No doubt these points have been made many times, and the Legal Education Committee must have been aware of students' feelings from informal discussions and the periodic

questionnaires distributed to Bar Ad students by the Director. Perhaps because the problem did not appear urgent, nothing was done. The Bar Admission Course was now receiving grants from the Department of University Affairs, enabling the Course's "excess of disbursements over receipts" to be reduced from \$113.6 thousand in 1969 to \$23.3 thousand in 1970.¹²

The last 12 years (since the Course was introduced) has seen the graduation of about half the legal practitioners in the Province. Apparently a large number of these retained their annoyance with the length and cost of the program after admission to practice. At the mid-winter Conference of the Ontario section of the Canadian Bar Association, a strongly-worded resolution was pushed through requesting that the Law Society now reduce the post-LL.B. training to one year. Sensitive to avoid yet another embarrassing confrontation, particularly at the time the Law Society Act was being rewritten,¹³ the Legal Education Committee, on February 12, 1970, recommended to Convocation:

¹²Source: Law Society Annual Report, 1970. This "excess of disbursements" is made up from general Law Society revenues.

¹³Another factor was that the McRuer Report (Royal Commission Inquiry into Civil Rights, Vol. 3) had made several recommendations concerning the reduction of the Law Society's power.

1. that Convocation authorize the Treasurer to appoint a Special Committee on Legal Education.
2. that this Committee may include judges, lawyers, Professors, representatives of government bodies of universities, law students and students in the Bar Ad Course.
3. that the area of study include the length and content of the university programs, the Bar Ad Course, and all matters relevant thereto.¹⁴

Convocation adopted the recommendation on February 20, 1970, and by mid-June the Special Committee had been selected. Its 24 members included three law students; one professor from each of the six law schools (usually the Dean); Dr. Roby Kidd of O.I.S.E.; two judges (Mr. Justice Galligan and Mr. Justice Arnup, who, as Treasurer of the Law Society in 1956 had conducted the first negotiations re the affiliation of Osgoode Hall with York University, and in 1957 was one of the members of the three-man Committee which prepared the new curriculum, originating the Bar Ad Course); three lawyers who are not Benchers (including Mr. D.H. Lamont, Q.C., Course Head of the Real Estate and Landlord and Tenant courses in the Bar Ad Course); the former Director of the Course, Mr. R.J. Roberts, Q.C., and the new Director, Mr. James

¹⁴Legal Education Committee minutes, February 12, 1970.

MacDonald; eight Benchers, including Special Committee Chairman, Mr. B.J. MacKinnon, Q.C. (Vice-Chairman of the Legal Education Committee in 1969), the present Chairman of the L.E.C. Mr. Robins, the present L.E.C. Vice-Chairman, Mr. Gray, and Mr. Martin, the Treasurer of the Law Society. Of the total of 24 members, 12 are now or have recently been senior officers of the Law Society, the Bar Ad Course and/or Benchers. The architects of the present system are therefore very heavily represented on this Special Committee, particularly if Law School Deans are seen as being in this category.

3. Characteristics of Benchers

As the Commission was greatly concerned with the question "How are decisions made and carried out in the field of post-secondary education in Ontario?" it was felt that a short study of the Benchers, as the key decision-making group in Legal Education, was called for. (The source of all data on Benchers is the Law Society.)

It is important to note at the outset that Benchers are elected; and any lawyer with the requisite number of nomination signatures can run. The list of current Benchers reads like a "who's who" of Ontario lawyers, including, to name but a few, Messrs. J.J. Robinette, Joseph Sedgwick, E.A. Goodman, Arthur Maloney, G.Arthur Martin and W.B. Williston. Clearly this is the elite of the legal

profession---very busy men who are willing to donate a portion of their time to the running of the Law Society.

A brief statistical analysis, first of the total Convocation of Benchers, then of those on the Legal Education Committee, follows.

a) Total Benchers in Convocation

By Size of Firm: Mean Average of 12.6 lawyers per firm

(versus modal average of 2-4 lawyers per firm in Ontario generally)

By Toronto/Balance of Ontario: 27 of 48 (56%) from Toronto (about same as all lawyers)

By Age:

Distribution

<u>Age Group</u>	<u>No. in group</u>	<u>% of Total</u>
80 and over	3	6.4
70 - 79	11	27.6
60 - 69	12	25.6
50 - 59	13	27.6
40 - 49	5	10.6
Under 40	1	2.2
	47*	100.0

*Age of one Bencher unavailable.

Mean Average: 62.6 years old

By Year of Call to Bar:

Distribution

<u>Period</u>	<u>No. Called</u>	<u>% of Total</u>
1910-1919	7	14.6
1920-1929	14	29.2
1930-1939	11	22.9
1940-1949	13	27.1
1950-1959*	3	6.2
	48	100.0

* Most recent was 1959 - not one Bencher has taken the Bar Ad Course.

Mean Average year: 1933

Mean Average Length of Practice: 37 years of practice

Age of Election: Average age when elected a Benchers is
49.5 years old.

b) Legal Education Committee

By Size of Firm: Mean Average of 17.2 lawyers per firm
(versus 12.6 for all Benchers, 2-4 for all Ontario lawyers)

By Toronto/Balance of Ontario: 12 of 18 (67%) from Toronto

By Age: Mean Average of 57.7 years old
(versus 62.6 for all Benchers, about 37.0 for all
Ontario lawyers)

By Year of Call to Bar: Mean Average, 1939, Mean Average no.
of years of practice, 31 years.

This analysis shows that the "typical" Benchers is near retirement age, a senior partner in a large, highly departmentalized and specialist-composed firm. The Legal Education Committee members are from particularly large firms, are somewhat younger than all Benchers, but are also clearly very senior practitioners.

In terms of success in the legal profession, age, type and size of practice and probable financial remuneration, the Benchers are highly atypical of the "average" lawyer in Ontario. This can be both a great strength and a great weakness. On the positive side, the ablest men in the profession are likely to become

the best leaders; on the other hand, non-representative elites tend to be undemocratic, and can easily lose touch with the ordinary members. In the field of legal education, the 30 years separating the average age of L.E.C. members and Bar Ad Course students can be a very large gap in ways of thinking, values and interests.

4. Special Committees and Decision-Making

The Special Committees represent a peculiar feature of Legal Education which merits separate study. The historical outline in the earlier part of this chapter shows that such Committees have been formed in 1923, 1934, 1944, 1947, 1957 and 1970--six Special Committees in 47 years, a rough average of one every eight years. Indeed, it would not be too great an exaggeration to say that the management of legal education in Ontario has been a management by Special Committee. Between the period crises, the regular Legal Education Committee administered the new status quo. When pressures for reform reached the critical level, another Special Committee was formed. Law Society critics could then no longer say that nothing was being done, and pressure eased. Special Committees typically have taken two years to report, by which time much of the impact of the original crisis has been dissipated. After the report, significant planning, policy-making, revisions and reform effort appear to

subside until the situation again becomes unacceptable.

For many years the issues in these flare-ups were the concurrent articling/lectures problem, and the freedom of the law schools. These are no longer as important in 1970; now the issues are the length of and socialization in the total program. But whatever the substance of the controversy, the form of decision-making remains the same: special, interim, ad hoc. The 1970 problem arose in much the same way as before, is being handled by the same decision-making body (although the composition of the L.E.C. has changed somewhat). Of course, every Special Committee created is by the very fact of its existence a testimony to the inability of the regular L.E.C. to handle the problems created by long-run change.

By now it should be clear that no curriculum decision can be "the final solution" for very long. If the future of legal education in Ontario is not to be punctuated by recurrent crises and crisis-diverting mechanisms, a new method of decision-making will have to be found.

The present Special Committee has raised many hopes, because its composition includes representation from every vested interest in the field of legal education (with the exception of the general lay public). This, quasi-parliamentary body is a characteristically

lawyer-like solution, in that it involves two aspects of decision-making most familiar to lawyers:

- a) The adversary system: in which each representative must aggressively push his group's interests to obtain the best possible compromise.
- b) Representation of interests: none of the important interests have been excluded or unrepresented. This particular decision-making environment has the advantage of familiarity, but also, can have several disadvantages.

Taking the second aspect first, representation is essential when legitimacy of power is a problem. But the Law Society clearly has the absolute statutory authority in this area. Its legitimacy is unquestionable. However, once representatives are included, to enhance and democratize this legitimacy, unless their points of view are accepted, the whole approach becomes meaningless. This leads to the second problem. Any adversary system of conflict resolution presupposes at least two conditions: that the adversaries are, in that particular dispute-settlement milieu, roughly equal (e.g., both parties are entitled to use counsel, can use the same law and procedure) and that the conflict can be settled impartially according to pre-established rules validated elsewhere. Neither of these assumptions is true in the case of the Special Committee. There are no commonly accepted rules for resolving difference of interest or opinion

on this Committee and no neutral arbiters. Hence the final compromises can be arrived at only on the basis of relative power, overt or implied. All the legal power resides in the Law Society (particularly as Convocation need not approve the Special Committee's recommendations), none in the other groups. Thus, in the event of serious disagreement as to values, not resolvable by rational debate, the only weapon the non-Benchers have is the threat of adverse publicity, of taking the matter before a large meeting of lawyers, to the government or the press, of strikes, demonstrations or other techniques of public confrontation or embarrassment. Undoubtedly it would be very unpleasant to resort to this, and perhaps even ineffectual. In the long run, unless the diverse groups can achieve unanimity, any compromise is likely to be most heavily influenced by the Benchers. Ultimately, everything can be (and probably will be) decided by the adversary process. However, that may not be the best way of having everything decided.

In addition to the difficulties caused by inter-group disagreement on the Special Committee, there is the complicating problem of intra-group relationships. The effectiveness and power of a Bencher in Convocation (or a Law Dean on the Committee of Deans) is in large

measure proportionate to his influence on other members of Convocation (or the Committee, etc.). The Benchers' need to justify his viewpoints to other Benchers not on the Special Committee can act as a constraint. The major decision before the Special Committee, the length of a curriculum, should be a decision based on the fairly objective considerations of pedagogy, time and cost. The potential personal gain or loss in power in an involved matrix of personal ambitions are not relevant to this type of decision-making. That is why politicians, recognizing this, delegate to civil servants those decisions which they feel are better decided outside the peculiar group dynamics of the political arena. In the field of legal education this delegation has not even been seriously suggested.

But, apart from the question of who makes the decision, the vested interests of the various groups will have to be considered in that decision. A brief outline of these interests follows.

The students' interest now is to reduce the total length of training to the shortest possible, consistent with receiving sufficient education to be able to practice. They would also be concerned with the socialization imparted during the process, as well as the creation of a new job placement system if articling is abolished.

The Law Deans' interest became clear during the

interviews. All six were very sure that the total process of legal education had to be shortened; all six were equally certain that none of this contraction could easily be made from the LL.B. program. They insisted that the system of specialization required two years of optional courses to allow the students (who all took "core" courses in first year) to take first level-courses in second year, advanced courses in third year. "An academic law program is impossible in less than three years; to reduce it to two would endanger a return to the 'trade school'." In this respect the Deans seemed far less flexible than the Law Society officers, who appeared to be open to the possibility that the practical portion of the training which they administered might be shortened.

The Deans' strong views are not entirely based on proven necessity. Harvard, the model for the three-year LL.B. program which Ontario law schools have adopted, is seriously considering reducing its course to two years (a fuller discussion of this is included in the following Chapter). If the Ontario LL.B. were reduced to two years, the law school's status would be greatly reduced. The uncompromising insistence on "academic benefits to students," of course, is not entirely unselfish since the resulting gradual elevation in the status, prestige and power of the Ontario law schools will tend to

benefit the law school faculty and Deans. However, the primary consideration should be the benefit to the student for whose instruction the law school was created, and whose own judgement as to the third year's benefits should be very heavily weighed in an assessment of its value, not the incidental prestige level of the faculty.

From the viewpoint of the practicing Bar, the longer the students can be kept in school the better. In the first instance, the longer, more expensive and more unpleasant the process of entry to the profession, the more potential competitors will be deterred from the field. Secondly, for the senior partners in the firms, it means less time (and therefore money) will have to be spent in training the student; the more of the training cost which can be transferred to the taxpayer and the student, the better for the firm. Third, it is flattering to the professional ego, for great length of training implies great importance in the work and skill in the practice. Finally, the legal profession has a long tradition of "initiating" the student by the subordination of his self-respect. The title "articled clerk" and such words as "diligently served" in the articling affidavit; the assignment of menial tasks, and the wage level lower than that of the average B.A. graduate; in short, the general climate of both phases

of the Bar Ad Course indicate a "hazing" attitude not unlike that in undergraduate college fraternities. Anthropology has told us that tribal initiation rituals are seen by the tribe as being very important to the maintenance of a certain kind of group cohesiveness. An analogous interest may be operating in the legal profession's method of administering training. After a few years the group member will tend to look nostalgically at this period (as evidenced by the highly positive views of senior practitioners toward the articling system, described in Chapter IV), remembering only the more pleasant events, and will himself grow to insist that the process of initiation is essential because of some higher principle. In tribes, these may be just the value of custom, or the appeasement of primitive gods; in legal education this has been called "the protection of the public" or alternatively, "the duty to certify only qualified persons." For those who have grown to believe that they have a duty to compel initiates in law to clear a long row of hurdles in the name of protection of the public, it is undoubtedly difficult to forego the exercise of this agreeable form of persecution. It may even be impossible.

For those members of the profession who participate in post-LL.B. legal training there are other advantages. Articling principals, particularly in large firms, can

use the process as an inexpensive testing/recruiting device, in addition to the possibility of direct monetary profit on the student. The instructors in the Bar Ad Course obtain the salary, plus the prestige of doing something quasi-academic. In a profession which strictly forbids advertising in any form (except for professional cards), anything such as teaching in the Course will tend to enhance the young lawyer's professional reputation and make him somewhat more visible.

From the statistics on Benchers' ages and sizes of firms it is evident that many of these individuals stand to gain the most from longer student training. Their large firms will enjoy the savings in training, and the recruitment value. They have been out of school far longer than most lawyers, and so will tend to be less sensitive to the needs of the student, more concerned with the benefits of the prestige and solidarity of the profession.

It should also be noted that being a Bencher is, in many cases, a stepping-stone to a higher political position. Mr. Joseph Sedgwick, Treasurer of the Law Society in 1963, referring to the Legal Education Committee, told a large audience of lawyers:

Our present Chairman is Mr. Sydney L. Robins, and as an encouragement to him may I tell him that those who have held that office since

the Committee was reconstituted in 1950, one, J.W. Pickup, who became as I have said, Chief Justice of Ontario; Carl D. Stewart became Mr. Justice Stewart, and Edson Haines became, very recently, Mr. Justice Haines. I bid Mr. Robins to hope, he is a young man and has lots of time. I have already mentioned Chief Justice McRuer as a member of the 1943 Committee; another former member of this Committee is now on the Court of Appeal, Mr. Justice McGillivray. And...I should add that six former members became Treasurers of the Law Society, Messrs. McCarthy, Denison, Mason, Carson, Robinette and your humble servant.¹⁵

Thus, another of the "vested interests" in the legal education power structure is the political ambition of the individual benchers, both in Law Society politics and at higher levels. This is in contrast with the legislative arena, where the non-political aspects of, for example, educational curriculum decision-making, are de-politicized as much as possible by delegation to administrative officials in the Department of University Affairs or the universities themselves.

5. The Sources of Finance

The sources of finance have had an important effect upon development in legal education in Ontario. While a direct cause and effect relationship cannot be

¹⁵Law Society of Upper Canada Special Lectures, 1963, p. iv. The Treasurer of the Law Society is a misnomer, as the function would actually be closer to that of a President, except that the Society has no such title. As mentioned earlier, Mr. John Arnup, the Treasurer in 1965, became a judge in the Court of Appeal this year.

proved, in the last 13 years, the two occasions on which the professional association ceded any permanent control over legal education coincided with the necessity of new sources of financing to ease monetary pressures. When the 1955 Special Committee was created it was already clear that enrolment at Osgoode Hall was leading to overcrowding, and that the trend to larger enrolment would continue. Thus the new curriculum in 1957 coincided with the decision to create several new law schools in the Province. The taxpayer would thereby assume a much larger share of the total cost (including administrative burden), while the professional association would retain the final control, by administering a substantial post-LL.B. training system and by approving law schools whose graduates could enter the post-LL.B. phase. Again in 1968, when the enrolment of the Law Society-administered law school began to crowd the Bar Ad Course, rather than expanding the physical facilities (the two-storey Law School wing at Osgoode Hall had been built to take an additional four storeys if necessary), the decision was made to give up the Law School to York University. However, this was only done in return for a provincial grant for the Bar Admission Course (in the first year, in the form of \$125,000 rent from York University while the Law School continued to occupy the downtown space; last year, as

an outright grant of \$200,000.)¹⁶

The Law Society's position re the financing of legal education has traditionally been that practitioners should bear none of the cost.¹⁷

Legal education being simply another prerequisite to the privilege of admission to the bar, the Law Society had no compunction about making it a source of substantial revenue. Indeed, the forty-year-old charge that law students were the major supporters of the Law Society was still widely, though perhaps unjustly, assumed to be true.

'From 1919 to 1923 inclusive...[the students'] fees have far exceeded the outlay on them. The Law Society revenue for these five years was \$727,173.32 of which the students paid \$443,958.53, over 60 per cent,...and the School cost \$140,303.46 excluding administration, or less than 20 per cent..., leaving a surplus of over \$300,000.

The phrase 'excluding administration' lends a distinct air of uncertainty to these figures. A statement of Revenue and Expenditures presented to Convocation in June, 1925 listed \$50,985.33 as the law school income and \$50,538.01 as its expenditures. Since the statement was not broken down in any way it is even less helpful than Mr. Denison's estimates. Students in 1924 paid \$50 on entrance for admission as a student-at-law (before beginning their period in articles) and \$100 per year as tuition for their three years at law school.¹⁸

¹⁶Source: D.U.A. Annual Reports.

¹⁷As the Benchers are elected by practitioners, to raise professional dues to cover rising education costs would be analogous to a government raising taxes.

¹⁸OHLJ 6:2, p. 189, referring to Denison, Legal Education in Ontario, (1924) Can.B.Rev. 85 at 87.

This "distinct air of uncertainty" is found in current Law Society figures as well, in that most of the revenue received from students during the Bar Ad Course is not shown as being allocated to the teaching period, but is lumped in with Law Society general revenues under the rather vague headings "Admission Fees" and "Call Fees."

Although the Law Society in recent years has suggested that now the Bar Ad Course is producing large deficits payable out of "general Society revenues", an examination of the source of these revenues reveals that the amount paid by students into the general account under these other named fees is almost exactly equal to the "loss".¹⁹ The student receives nothing in return for these other payments. It is clear that the practitioner is still not directly financing legal education. This also demonstrates how the budget for the B.A.C. is in fact calculated.

¹⁹Source of all figures: Law Society Annual Reports, 1969 and 1970. It would appear that government financing is providing a new source of funds, has enabled the B.A.C. to expand its budget substantially in 1970, without incurring a net deficit. (The sums shown as Admission Fees and Call Fees may include a few transfer students from other jurisdictions who did not article in Ontario. However, as transfer fees are shown as a separate revenue item the amount of possible discrepancy is insignificant.)

The 1969 Grant in the form of rental from York University is added as a new source of financing to the B.A.C., both because that would appear to be the intention of the grant (the University being the conduit) and because the cost of running the Law School, already being supported by federal and provincial public funds, did not increase suddenly by that rental amount in one year.

The 1970 Annual Report shows a net loss of \$23,342, after the government grant is included, rather than an actual net profit of about \$120,900.

	<u>1967</u>	<u>1968</u>	<u>1969</u>	<u>1970</u>
B.A.C. Disbursements (\$000)	179.8	204.6	232.8	356.5
Course fees - \$290 per student ("Receipts")	<u>85.3</u>	<u>103.8</u>	<u>119.2</u>	<u>133.1</u>
Profit (Loss) Shown in Annual Report	(94.5)	(100.8)	(113.6)	(223.4)
Students' Admission Fees (\$101) plus Call Fees (\$215)	100.5	118.4	136.0	144.3
Profit (Loss) Before Grant	6.0	17.6	22.4	(79.1)
Ontario Government Grant	---	---	125.0	200.0
Net Profit (Loss) After Grant	6.0	17.6	147.4	120.9

The above figures, if correctly interpreted, suggest that law student training continues to be a small source of revenue for the professional association, and not a loss, as claimed.

The classification of the bulk of student fees as "general revenue" and the attempt to characterize the Bar Ad Course as a money-losing proposition generously supported by the professional association (from its general revenues) appears as a rather unsubtle attempt to conceal from the student that in effect he has paid a fee of \$606 (now raised to \$666) for the teaching period of the Bar Ad Course, and to give him the mistaken impression that the profession is subsidizing his education by the pro-rata amount of the indicated "loss".

If the hypothesis that it is mostly economic pressure that induces the Society to give up any degree of control over legal education is true, then it is unlikely that the control of the Bar Ad Course will be easily surrendered so long as student fees and government grants continue to make it financially profitable.

6. Summary

That legal education in Ontario is too long is explained in large measure by the manner in which the length and content of the curriculum was determined in 1957, as a political compromise between two warring factions. Today the relationship between the professional association and the law schools is much more amicable; indeed the two groups have, in effect, jointly levied a time-cost of five years of the law student's life, and allocated this between themselves on a 3:2 basis. The tacit understanding today seems to be, "I'll leave your portion of time alone, and let you do what you want in it, if you do the same with mine." The only groups not consulted in the decision are the student body and, of course, the general public. Curriculum planning is not best conducted by the adversary process, especially when the adversaries have vested interests in legal education such that some of the criteria used for decision-making may bear little relevance to educational values.

Curriculum planning should be based on considerations such as:

1. The nature, quality and quantity of public demand for legal services in 5, 10, or 20 years' time.
2. The available supply of lawyers in each specialty.
3. Cost-benefit studies.
4. The needs of students.
5. Professional standards.

Because this data is unavailable today, very busy practitioners and professors, however well-intentioned, can only make subjective, impressionistic decisions based on personal philosophy or interest. Any particular decision, therefore, is largely a result of the power factors: group dynamics in meetings, fear of adverse publicity or a return to open confrontation; or concessions given in one area in return for concessions in another, perhaps unrelated area.

Fundamental differences in educational philosophy between lawyers and law schools have been able to coexist since 1957 largely because legal education is administered by several different bodies: the law schools during the LL.B., practicing lawyers during articling, and the Legal Education Committee during the Bar Ad Course. Because these groups have recognized their differences of interest, in order to avoid conflict the levels of control

have been made sequential rather than concurrent. The students and the taxpayers have borne the cost of this inability to administer the process concurrently.

The question was asked of each of the Law School Deans as to whether their school could administer a form of practical legal training, as part of either the third year or a new fourth year, the objective being to graduate a fully-trained lawyer. With one exception, the reaction was strongly unfavourable. One of the grounds given for rejecting the idea was that it would require two kinds of faculty members, law professors and practitioners, and that this would create an unhealthy, administratively difficult faculty climate. It is precisely this unwillingness on the part of each group to accept the other and to see the larger importance of the common goal that leads to the segmentation of the legal education process and the perceived need to make its stages sequential. The Law Schools' disinterest (until very recently) in developing any sort of practical legal education within the LL.B. curriculum, their insistence on using "their three years" entirely for academic law courses, has perpetuated the felt need for post-LL.B. training.

The history of the Law Society's management of legal education in recent years reveals that the Legal Education

Committee has done very little serious analysis and planning of legal education and has exercised virtually no leadership. The obvious pressures of increasing enrolment and costs and the predictably necessary reforms in Course curriculum due to the changing nature of legal practice, have been largely ignored until the present controversy broke out last year. The problem has not been that the Benchers actively opposed progress, but that they have failed to exercise foresight and initiative. In 1969, for example, major renovations were completed at Osgoode Hall, expanding the space occupied by the Course. The total cost was \$554,000, of which \$375,000 will be recovered, over five years, from provincial grants. In 1970, a Special Committee was set up to decide, inter alia, whether the Course was still necessary. It would have been considerably less expensive to make the latter decision first. All the problems were apparent before the renovations were undertaken.

In almost every field of education in North America, fundamental reassessments have been taking place over the last several years. The Commission's own Statement on Values in Appendix C of the Research

Committee Guidelines is an example of this.²⁰ New structures have been created to give students greater influence over the decisions that shape their lives. The environment of post-secondary education has been one of acute sensitivity, self-consciousness and experimentation. But the Law Society's administration of legal education is in sharp contrast to this general pattern; it is characterized by a singular lack of searching, self-criticism, or increasing democratization. The prevailing attitude seems to be that until there is serious vocal protest, everything must be all right, so that changes are unnecessary. This attitude virtually ensures the eventual crisis, and what is worse, the rather unsatisfactory kind of decision-making which crisis brings.

Without long-term access to the deliberations of the Legal Education Committee, it is difficult to determine why it adopts such a passive approach to reform. Two hypotheses could be:

1. The L.E.C. has itself no clear view as to where legal

²⁰"The distinction between learning and teaching must become increasingly fuzzy, for in this distinction resides the centre of inertia which opposes change. While youth must continue to respect the value of the expertise which comes from experience and sustained scholarship, the experienced scholar must accept the fact that in deep specialization he is prone to ossification and irrelevance, diseases which can only be remedied through sharing the seats of academic dialogue and policy development with the neophytes."

education in Ontario is going, or ought to go.

Without the availability of the necessary data for rational decision-making (as outlined above), planning and policy-determination is difficult and unpleasant, and understandably, to be avoided for as long as possible.

2. Its members are too preoccupied with running large law firms, court appearances, and a whole host of community activities, of which being a Benchers is only one. Management of the Law Society may be fitted in among a multitude of corporate directorships; it is a gentleman's hobby, not a full-time occupation. Thus there is simply no time to do continuing research, to be always improving. Whenever a "problem" arises, it is "solved."

Given a record of decision-making which, by almost any standard would have to be judged as less than adequate, perhaps the Legal Education Committee itself will come to accept that legal education in Ontario is by now too large and complex an enterprise to be managed on a part-time basis, as it has been in the past. While the final control is by statute vested in Convocation, this does not prevent the delegation of the vital administrative tasks of research, planning, implementation and evaluation. Perhaps it would be preferable to have

these functions performed by men with shorter backgrounds in law, but with more available time. Judging by past experience, continued centralization of all control in the Legal Education Committee, to which the Director of the Bar Ad Course reports, ensures that these tasks will not be undertaken. It may even be necessary to discard the venerable superstition that only lawyers can possibly know anything about legal education, and to include educators and administrators who are non-lawyers. Lawyers, as a group, have no particular expertise in education per se; their one indispensable input into the legal education decision is information about what lawyers need to know for today's kind of legal practice.

Unless significant changes are brought about in the manner in which decisions about legal education are made, the problems outlined in this Chapter will continue, and perhaps increase. Even the 1970 Special Committee cannot find a solution which will be "the answer" for more than a few years. As the character of decision-making is a function of the decision-makers, any proposals for improvement of the former will have to at least consider changes in the composition of the latter.

Although the Minister of Education and of University

Affairs has no direct authority over the delegated self-government of education granted in the Law Society Act, a less direct, but perhaps more important form of control can be exercised through financing. In addition to the large capital and operating amounts the Province is spending on LL.B. programs, in 1970-71 about \$500 thousand in provincial funds (plus about \$400 thousand paid by students in the form of various fees) will be required by the Law Society to cover "practical" legal training. By fixing a total budget for both phases of legal education combined, at a level of financing somewhat below what is now being granted, the Minister could necessitate a contraction in the total length of the process (it is unlikely that student fees could be raised further by the B.A.C. to offset Provincial budget cuts). Furthermore, by determining the specific allocation as between the universities and the professional association, or by granting the total amount to the Law Schools in return for their administering an acceptable practical training program, the Minister can ensure that more integrated legal education will be achieved, in less time and at less cost.

It is respectfully suggested that the Honourable Minister, in arriving at these decisions, take into consideration the insignificant "bargaining power" of both student and the taxpayer in the committees where decisions about legal education are made.

VII. The Professional Education Aspect - Integration of Theory and Practice, Licensing, Specialization and Curriculum

The purpose of this chapter is to look at legal education in the context of the 'special constraints imposed upon it by the fact that most of its graduates enter a practical profession at the end of their training.¹ Where relevant, comparisons will be made with the medical profession.

1. Professional Skills and Personality Traits

The single factor which distinguishes trade or professional education from academic education is the need to impart specific skills relevant to that profession, in addition to the requisite formal knowledge. A surgeon who understands surgical techniques but has insufficient manual dexterity for surgery should not be allowed to perform delicate operations; similarly, a lawyer who can recite by heart all the rules of civil procedure, but who is inarticulate before a real court, should not be allowed to practice litigation. Because of the great dangers involved, the medical profession has devised means of examining future general practitioners or medical specialists on skills as well as knowledge. The

¹In the 1967-68-69 graduating classes, 10 per cent went into legal practice as solo practitioners and 81 per cent with law firms; only 9 per cent started in positions with other than a law firm. (See Table S-14, Appendix III.)

legal profession has yet to do this for either the general lawyer or the legal specialist.

The root of the problem in legal education is that in spite of the availability of adequate measurement techniques from the social and management sciences, the legal profession has yet to determine what it is that lawyers actually do today, and are likely to do in the future. Unless it is known what various kinds of lawyers actually do, under what conditions they work, and what skills they use, it is impossible to do anything but guess as to what a candidate must learn and be examined upon, before he can be admitted to practice. The requisite education and testing, in order to protect the public from incompetent practitioners, should be based on such information; curriculum and examination requirements should not be entirely determined by the subjective impressions of those highly atypical members of the profession who happen to have been elected to run the professional association.²

A study of the legal profession in the U.S., by Martin Mayer, can be helpful.³ Mr. Mayer describes the four categories of lawyers' activities as: fighting, negotiation,

²If it is true that the Law Society has not yet conducted a comprehensive manpower study or even defined the categories of specialties, its claim to being exclusively qualified to regulate legal education and professional testing is hardly supportable.

³Martin Mayer, The Lawyers, 1966, p.29-118.

securing (i.e. drafting) and counselling. All these skills may be exercised in a single job for a client, but (since few men are equally good at all of them) probably by different members of the firm. Apart from a perfunctory exposure to moot courts during the law school and a small amount of drafting during the teaching period of the Bar Ad Course, no organized attempt is made to enable the student to acquire the necessary skills.

The four activities, fighting, negotiation, securing and counselling, would seem to be aided by the personal traits of self-confidence, shrewdness, imagination and empathy, all of which can be developed and improved. The relevant skills might be: the ability to communicate persuasively in speech and writing; and independence and originality in thinking. The working knowledge of the law and procedure in the area of specialization is also essential, but it has often been said that 99 per cent of the things a lawyer handles are fact situations.⁴ In dealing with people and facts, the personal qualities and skills of the lawyer tend to be more important than his technical knowledge.

Much of the training a law student receives seems almost calculated to prevent him from acquiring these skills. At law school,

⁴Ibid, p.93.

The study of actual law cases - almost always at the appellate court level - combines with the Socratic questioning sequence in class to keep students continually on the defensive, while giving them the feeling that they are learning hard law. Inasmuch as the Socratic method is a game at which only one (the professor) can play, the students are conditioned to react to questions and issues which they have no role in forming or stimulating.⁵

This technique is not likely to develop independent thinking, as the "relevant questions" tend to be determined by the professor before he enters the class. And the deliberate bullying that some otherwise very gentle professors indulge in is hardly conducive to the growth of self-confidence on the part of many students. Very often the aggressive student becomes more glib, the shy student more inarticulate. Some students have even gone to professors after class and begged the professor not to ask any more questions of them in class. One professor confided that he refuses to use the Socratic method with his students because "I don't believe in teaching people by crushing their egos." Female students particularly resent this reductio ad absurdum teaching technique, and as their proportion of the total student population grows, the "boot camp" atmosphere of the first year at law school may have to become somewhat more refined.

⁵Ralph Nader, op.cit.

The option system now found in second and third year encourages students to take a rounded program of basic courses (e.g., Commercial Law, Tax I, Real Estate) first, then to "specialize" (e.g., Advanced Commercial Problems Seminar, Tax II and III Seminars, Land Use Planning). Most of the advanced courses are seminars, where students do considerable depth of library research into the law in one narrow area, and write a paper as credit for the course. For example, the 1970-71 Calendar of the Faculty of Law, University of Toronto, states that

...each Third Year student must complete not less than one substantial research and writing project but not more than two....This project is demanding and the paper must be of roughly the same quality as an article for a reputable law review.

As law journal articles are not particularly notable for the imagination of their proposals or the clarity of their writing style, the "substance" referred to is in the depth and thoroughness of the research. Some critics have questioned the usefulness of this to the potential lawyer.

...it is not clear whether extensive research papers --along the lines of a law review article-- will materially aid in the preparation of a tax practitioner or a poverty lawyer. As one might expect from authors who are themselves professors, many of the proposals seem better designed for training teachers and scholars than practicing lawyers.⁶

⁶Dean Bok, Harvard University Law School, 1968-69 Report.

At the articling level, the student can begin for the first time to exercise his judgement on a small scale in practical legal matters. But unless the principal spends some time correcting the student's writing and speaking style, articling is not likely to contribute much to these essential "tools" of the practising lawyer. The student could acquire as much or more in the way of lawyer's skills by taking a public speaking course. The subservient, low-status situation in which many students find themselves as "articled clerks" does little to enhance their self confidence (the same could also be said of the Bar Admission Course).⁷

During the Bar Admission Course the student is only too aware that four years of work and foregone pleasures can be negated by the failure of even one of the thirteen examinations. On the other hand, there are prizes, medals and recognition to be obtained, for the top students. Examination consciousness understandably determines the student's assessment of which course material is important, and should be mastered, and what can safely be ignored. However, one of the objectives of legal education has to be the training of lawyers who have the integrity and strength of ego to set their own standards of what constitutes

⁷ Indeed it might be asked whether the retardation in the development of the personality which results from keeping a man in a dependent, unqualified "pupil" status into his late 20's is offset, in the long run, by the value of the learning experience.

good work since after the Bar Ad Course the lawyer will never be examined again. It would appear that the negative stimulus of the examination system as presently administered has the opposite effect. The standard to which the student's work is required to conform continues to be externally imposed rather than determined by the student for himself and judged relative to the work produced in that particular test environment by all other students, rather than relative to the student's own abilities. This is likely to retard, not foster the internalization of the student's own standards. Further, the enforced passivity engendered by the "spoon-feeding" lecture system is of doubtful benefit to the self-reliance or imagination. These pedagogic incentives or disincentives are, of course, every bit as important as the rapidly-obsolete specific precedents and forms taught. Perhaps the spirit of the Hall-Dennis Report and the changing climate in the elementary and high schools should be considered for introduction into the Bar Admission Course.

2. The Integration of Theory and Practice

The premise underlying the entire system of legal education in Ontario is that there is something called "theoretical law" and something else called "practical law" and that these two are pedagogically immiscible. Therefore, it would seem, theory and practice must be

taught sequentially, and by different groups of instructors. The academics supposedly teach "theory" (substantive law) and the professional association instructs in "practice" (procedure, forms, etc.).

Unless the young man gets both phases and gets each phase from the persons who are keen and qualified to teach it, he will not, in my contention, be properly qualified for practice.⁸

Clearly, this is a false dichotomy; several other types of professional education, including medical, quite successfully integrate the teaching of theory and practice. The explanation for this alleged irreconcilability has little to do with the nature of legal education, and very much to do with the internecine struggles of the legal educator groups. After the conflict between the academic lawyers and the practising lawyers of the 1950s had eased into the peaceful co-existence of the 1960s, the myth that each had a distinct function was gradually developed to conceal the unwillingness of the two groups to collaborate on a unified curriculum. When the suggestion of a single three or four year theoretical-practical program of legal education was suggested during interviews to one of the officers of the Law Society and two of the Deans, each of the three quickly asked: "Yes, but under whose control?" The sharply-felt differences between the two

⁸R.J. Roberts, Q.C., "The Bar Admission Course in Ontario", op.cit., p.749,

lawyer castes, academics and practitioners, is the ultimate barrier to an integrated legal education in Ontario. Unless a more powerful external force, such as government, pressures the two into a compromise which places an integrated legal education curriculum ahead of the mutual distaste of "academic" and "practical" lawyers, neither the length of the total period nor the contradictions in the values it teaches will be significantly reduced.

While a totally integrated program may be unrealistic in the immediate future, as a minimum, the present phases ought not to be out of synchronization. At present they mesh reasonably well, but unless major changes are introduced into the Bar Ad Course curriculum by 1972, the Course might become chaotic. The assumption until 1969 when the option system was introduced into the law schools was that all students would take the same courses through law school, when, having mastered the substantive law, they would go into the Bar Ad Course. The Course did not cover any subject at the practical level which had not also been taught at the law school, because there is little benefit in learning the procedure without prior knowledge of the substantive law; for example, how to draw up the documents for the incorporation of a limited company, without first understanding what a limited company is in law. But now Company Law, Real Estate, or Wills

and Trusts are no longer compulsory courses in law schools; many students do not take one or several of what used to be considered the eight to ten "basic" law courses in the upper years. Yet the Bar Ad Course Curriculum still allows no options, and includes three full weeks of each of Real Estate, Corporation and Commercial Law, and Estate Planning. Unless the Course is optionalized before the first graduates of the law school option system reach it, in 1972, it will be exceedingly difficult for an instructor to teach Estate Planning when one-third of his group may have taken it already as a specialty in law school, one-third have only taken the basic law school course, and the remaining third do not even know what an estate is. However, financial, teaching staff and space limitations make it almost impossible at present to introduce concurrent options in the Bar Ad Course.⁹ This now unavoidable disjunction in the law school and Bar Ad Course curricula is the unfortunate result of having two attitudinally divergent bodies administering discrete portions of legal education.

A second problem in the integration of the LL.B. with the Bar Ad Course stems from the direct influence of Bar examinations on the law school curricula:

⁹Source: Mr. James MacDonald, Director of the Bar Admission Course.

Our present institutional framework for policing the qualifications of admission to, and membership in, the Bar is both outmoded and irrelevant. Bar examinations follow a content pattern borrowed from outdated law curricula - over which curricula the Bar itself exercises some control - and have often little or no relationship to a candidate's competence for the practice of law. Yet, whatever improvement is made in the law schools only increases the necessity for this kind of cramming. Accordingly, not only does the content of the Bar examination - together with the Professional Bar's control over curriculum - tend to inhibit change in the educational curricula of the law school; but the reverse proposition is also true - the extent to which the law school modernizes - or can modernize - its curricula and explores new frontiers in legal education places its graduates at a competitive disadvantage in taking the Bar examinations.¹⁰

It is a matter of continuing notoriety that every year a very large percentage of the Harvard Law School graduates taking the Massachusetts Bar Examination fail it. In Ontario, the 15-month break articling provided between the LL.B. and the Bar Ad Course, makes the connection between law school and Bar examination less direct. Nevertheless, it is common for students to complain to the Course instructors and officers that, while they enjoyed a particular law professor's emphasis at the time, in the light of the disadvantage it placed the student during an already demanding Bar Ad Course, the professor should be forced to

¹⁰The Honourable John N. Turner, Minister of Justice and Attorney-General of Canada, excerpt from a speech to the Commonwealth Caribbean-Canadian Law Conference, Kingston, Jamaica, March 11, 1970. The Federal Department of Justice is the country's largest single employer of lawyers, with more than 400 lawyers on staff.

teach some of the "black letter" fundamentals he ignored. The counter-argument would be, as Mr. Turner implies, that the Bar should be precluded from maintaining a system of cram courses and examinations which has the effect of penalizing imagination and improvement in the law schools.

3. Law School Specialization or Shortening the LL.B.?

Until recently Ontario's law students used to take seven or eight courses per school year, each course running all year, with final examinations in Spring. Now the law schools have moved to a two-semester system, with most courses lasting only one semester. This has resulted in two 15-week terms with an average of five courses being taken by each student per term. Most courses have been reduced in length from 60 hours (over two terms) to 45 hours (in one term). In the same number of total hours over the school year, therefore, students now take two or three more courses. As a result, if a student takes only those courses which were formerly considered "basic," he can complete what would have required at least two and a half years (before the semester system) in two years.¹¹ Because the Law Society now accepts a 45-hour concentrated course as being academically equivalent to the former

¹¹ Dean Gerald LeDain of Osgoode Hall Law School told a Canadian Bar Association meeting that the evidence seems to indicate that when given free choice, students still tend to take all the subjects formerly considered mandatory. (Quoted in the Canadian Bar Journal, Vol.1, No.1, p.5.) Because of the shortened number of hours per course, they can do this and still get a fair number of the new courses.

60-hour year-long course, then at least hypothetically the law schools could eliminate the third year, and graduate students in two years with almost as much legal knowledge as used to be imparted in an acceptable three-year program. (Of course, this 'would eliminate most of the option system and the opportunity to specialize.)

In the United States serious debate is taking place over the reduction of the law school curriculum to two years. It has not yet begun in Canada. There are, however, sound reasons for considering the deletion of the third year:

a) Law teachers have found that most students consider the third year of little interest to them. In fact, two of the Deans emphasized that the boredom with the "law school game" affected their students by second year.

We know that students approach first year with a great deal of enthusiasm and a sense of challenge, but after that it is exceedingly difficult to make them enthusiastic about enduring another two years.¹²

This feeling of boredom might be less acute if schools and students still retained a "finite quantum of knowledge" model of legal education believing that the law schools could teach all the law worth knowing in three years.

¹²LeDain, Ibid, p.5

However, for many years now, a "process" model of legal education has been accepted, the attempt being to train students to think in a "lawyerlike manner," while teaching some basic principles of law. Harvard's Dean Bok asks: "If these are the objectives, why can't they be achieved in two years?"¹³ He suggests that this question takes on greater urgency when recent statistics show that second-year students perform a bit better than third-year men when they are mixed together in the same classes.¹⁴

Underlying causes may be either the many years that the student has been in school engendering a kind of academic ennui; or the possibility that the prospect of a practical articling period overshadows the last two years of academic training. Or perhaps the thunder and fury of the first year Socratic method is a hard act to follow, and the quieter upper-year lectures and seminars appear dull in comparison. Whatever the explanation, the educational value of a third year must be seriously questioned when the law schools, by their own admission,¹⁵ have difficulty keeping students interested; no honest legal educator would want to compel students to attend the third year unless he believed that the average student

¹³ Op.cit., p.7

¹⁴ This mixing happens because 2nd and 3rd year students can take any course; optional courses are not classified as 2nd or 3rd year courses.

¹⁵ Not only Dean LeDain, but most of the Law School Deans, mentioned this motivation problem occurring in second, or usually, third year.

would gain more from this year than the alternative, being admitted to practice a year earlier.

If it is true that most students are taking the formerly mandatory courses in second year, and if the motivation problem is as serious and widespread as is suggested by the Deans, then this makes a mockery of the claim that the new curriculum affords the opportunity of specialization. In fact, it forces specialization on every student, including many who perhaps do not want to specialize at this early stage. As there are not enough general, basic options to fill more than one of the two upper years, the student must take advanced courses - whether he is interested in them or not - simply to fulfil the numerical credit requirements. Thus he may have to enrol in such courses as Law and the Media or International Business Transactions merely because they are there and he needs ten courses in third year. The real "option" would be to give the student the choice of taking these specialist courses as credit for a new, specialist degree, or leaving the school one year sooner with a generalist degree. (Paradoxically, the law school--the first stage of legal education--forces the student to specialize, but the Bar Ad Course, the later stage, precludes specialization.)

b. Specialization in an academic context may have little value for the student. In the first place, "specialization" is often just a euphemism for lots of library work in a field which happens to interest that particular professor. Available faculty qualifications, or the fact that a professor may be writing a book at the time, which can be made into a course and where the students do some of the research for the book, may be the "reason" for the creation of a course; as yet there have been no comprehensive surveys of student interest to determine what they would like to specialize in, before the courses are offered. Pruning of unpopular courses the following year is not an adequate measure of student demand because it is entirely negative; it does not consider interest in courses which were not offered, and fails to accept the possibility that a significant portion of student course choices were on the "lesser of evils" basis rather than from any positive desire to study the particular option selected.

Secondly, most students in law school do not know what field (if any) they will specialize in as practitioners. As a result, specialized courses at this stage may have little relevance for them. A large percentage of students are specializing in the currently fashionable "criminology" and "urban planning" areas, without realizing that the demand for lawyers in these specialities is fairly small,

(for example, the Criminal Law Bar involves about 4 per cent of the profession; urban planners are even fewer); and without knowing enough about the actual climate of practice to be able to decide whether they are temperamentally suited to that kind of work. While some educators may argue that any form of intensive legal training is superior, whether or not the student later specializes in this field, it should be recognized that the "specialist" courses are taught in the same educational format as the other courses, so are not really more difficult or intense; the professor may only be a "specialist" himself because he took his LL.M. at Harvard in that subject the previous year.

Finally, the claim to meaningful specialization in law (essentially a practical profession) through the student's taking one or two extra law school courses is somewhat of an absurdity. Martin Mayer suggests that "There is something quite odd about the notion that a university is a good place to teach young people how to think like lawyers."¹⁶ It is even more curious that any amount of law courses could produce anything but an academic kind of specialization. The criminal lawyer is not a specialist because he has learned the Criminal Code in great depth and taken advanced courses in the psychology of criminality or the morality of punishment; his personal

¹⁶The Lawyers, p.78, op.cit.

relationship with Crown Attorneys, which enables him to negotiate the dropping of some charges, resulting in shorter sentences, is what makes him particularly valuable to his clients. Keeping in almost daily contact with the Department of National Revenue, knowing Departmental practice, being more likely to obtain favourable rulings, and knowing the personnel in the Tax Appeal Board, are highly important to a Tax specialist. In light of this kind of reality, the specialization pretensions of the law schools may perhaps be explained as a failure of imagination in finding some other way of filling the available time, or simply an uncritical duplication of American law school curricula. Ironically, at the very time that the American originators of the system are seriously looking at shortening it, the Ontario Law Deans insisted that a worthwhile program cannot be implemented in less than three years, and that this "new" curriculum should be "given a chance to prove itself."

c. Although it may be due to the newness of the system, there have been tremendous administrative problems with the option program, with the exception of the Universities of Ottawa and Windsor, where physical plant limitations last year permitted only a small faculty and student body, so that there were fewer options to contend with.

Student demand for the various courses would have to be fairly level from year to year, to make scheduling easy. The schools could ideally measure this demand, select the courses, and then hire the necessary professors to teach them. Of course in reality, the reverse has happened: the schools started with a full complement of professors, who were qualified for, or interested in, teaching certain courses. These courses were then offered to the students. The number of students usually selecting each course varied enormously. At Osgoode Hall Law School in 1970-1971 the enrolment in Accounting is 155. (one class), Real Estate, 81, Regional Transportation, 4.

The large number of constraints imposed by curriculum rules also made planning very complicated. Some courses required prerequisites. Others were seminars for which credit was obtained by writing a substantial paper; and there was a limit of two substantial papers per term. Some courses allowed either paper or exam credit to be obtained. Because very many of the courses (after the few basic ones) were paper-credit courses, this made it difficult to find enough examination-credit courses to fill four terms; for this reason, many of the exam-credit courses became overcrowded. Timetable problems sometimes necessitated difficult choices. If the student took three basic courses one term, he might often be unable to find

any other courses which interested him at an available time period in that term. The simultaneous operation of all these constraints can very quickly reduce what at first appears to be a rich choice of options down to a forced selection between a very few possible courses.

For the school administration the coordination of these study plans can be a nightmare, even if computerized. A difficult allocation problem arises because enrolment in some courses is restricted. At Osgoode Hall Law School most courses have quotas of either 20 or 100 students, depending on the type of course. The basis of selection is a lottery. Once the quota for the course is filled, no further students are admitted. Each student, on his study plan, is required to assign a priority to every course he selects. These priorities are taken into account to try to give most students as many of the courses they want as possible. However, Mr. Carter Hoppe, administrator of the program at Osgoode Hall last year, stated in an interview that this system could guarantee the student only one of the ten courses he had asked for that year. Theoretically, he could be assigned to nine other courses, none of which he had requested in his study plan. If the student sends in his requests too late (i.e., after the lottery), or makes a mistake such as giving first priority to a course he does not have the prerequisite for, he might initially get none of the courses for which he asked.

In practice, most second year students get most of the courses they want, largely because they are applying for basic courses with quotas of 100 (which quotas are often ignored, as it would be difficult to refuse to let a student take Commercial Law simply because the class was too large). However, third year students, usually trying to get into limited enrolment courses, get a poor choice; and this is further complicated by the two-paper course limit. In fact, the more the student really wants to specialize, the less likely he is to be able to. For example, if a student wants to take Advanced Tax courses as three of his five courses in one term in his final year, he probably would not be allowed to because all three would be paper credit courses. If he agreed to substitute an advanced exam-credit course in a related subject for one of them, his chances of getting all three would be dependent on his winning three lotteries. Thus, the more specialized the student wants to be, the more lotteries he has to win, but the probability of getting all the courses he asked for varies inversely with the number of lotteries in which he has to participate.

Mr. Hoppe found three basic reasons for student dissatisfaction:

- i) Students did not get many of the courses they wanted.
- ii) They could not even ask for many of the courses they wanted because of timetable or paper-course limitations.
- iii) They did not know what courses they wanted because they could not foretell the value to them of these courses "on the outside", did not know the professors, or found the sketchy course description unhelpful or misleading.

If the law schools support the need for a third year on the basis of the opportunity for specialization, unless the schools can actually deliver most of the courses, which the great majority of third-year students select, there can be little justification for conscripting a student into an additional year in which he is likely to be required to study several courses of minimal interest to him.

4. Shortening Articling

The questionnaire showed that a significant majority of students favoured shortening the articling year (See Chapter IV). This is not as simple to do as to suggest. In the few States in the U.S. which have retained articling, the programs do not appear to work well. This is generally attributed to the fact that they last from six to nine months, and can be split into segments in summers at the option of the student.

Whatever defects the present Ontario system has would tend to be aggravated rather than reduced as a result of shortening the process. In the first place, the quality of the work assigned, already criticized as involving too many menial jobs, would probably deteriorate:

I cannot see how these (shorter) American systems can work because the law offices cannot count on having clerks at all times and therefore cannot set themselves up to rely upon them or to train them. Ours works quite well....Our offices realize that they cannot make much use of students unless they provide them with private office space and secretarial service. They can afford to do this on a permanent basis because one always succeeds another....But in Pennsylvania, for example, where lawyers do not know when they will have students and when they will not, and when those students will not be around long enough ever to be of much use, it is to me no wonder that there is difficulty in finding preceptors and that the students are used as messenger boys rather than given worthwhile tasks to do.¹⁷

A second problem lies in the economics of articling. It was suggested by an officer of the Law Society, in an interview, that firms lose the most money on their students during the first six months, when the students know virtually nothing of practice, and consume the largest amounts of the lawyer's time. In the second six months, the firm recovers some or all of this initial investment as the student begins to be somewhat more productive than

¹⁷ R.J.Roberts, Q.C., op.cit.

time-consuming. However, if the process were cut to six or nine months, the opportunity for recovery would be reduced and the firms would tend to allocate even less of the principal's time to the student than at present, as any time so devoted would be almost a certain economic loss.

If articling is a necessary part of legal education, and if everyone in the province is a potential beneficiary of this, it can hardly be insisted that the individual lawyer directly subsidize the general taxpayer. No other profession does this, nor are B.A. graduates required to contribute funds directly to the educational cost of individual B.A. students. Because the lawyer pays his taxes, he will not likely feel obligated to participate in what would be a form of voluntary increased taxation any more than he would send unsolicited contributions to the Provincial Department of Revenue. Undoubtedly many lawyers feel a sense of duty toward the profession; but there are practical limits to this. Clearly professional idealism cannot be taken for granted and counted on to subsidize a substantial part of the legal education process. If, as at present, lawyers are not too sure whether they profit a little or lose a little as a result of taking on articling students--but the economic difference in either case is not perceived as being very significant--they will probably be quite willing to keep the system. On the other hand, if it appears certain that they will incur a substantial loss,

lawyers' enthusiasm for articling will not unreasonably diminish. Either they will accept fewer or no articling pupils, or, if students must article in order to practice, may continue to take them but will spend very little time with them.

It would therefore appear that articling should either be maintained at its present length or be abolished entirely, as compromises in length would decrease rather than improve its learning value.

The abolition of articling may be almost unthinkable to many Ontario practitioners (especially those who did not pass through the post-1957 system). However, when the American program of legal education was adopted in Ontario in 1957, all the premises of that system were included. Therefore, unless Ontario is deliberately seeking to create the longest possible legal education system, the grafting of elements of the English "trade school" method onto the end of the full American "academic law school" approach virtually ensures an inordinately lengthy and expensive process. Hence the abolition of articling is decidedly "thinkable."

If articling is to be justified, on the analogy of hospital internships for medical doctors, then some standards should be set to control the firms. Clearly it is to

nobody's advantage to have students learn bad practice habits from incompetent or unskilled practitioners (of which every profession has a few). At present, these are not weeded out by the profession. Once the Bar examinations have been passed, unless the lawyer is disbarred (which is rare), he is free to practice at whatever standards he sets for himself (unlike a doctor, for example, whose hospital "privileges" are determined by the rating he is given by his peers). Thus, if the extra year is warranted, there must be some guarantee of minimum standards applied to principals, and the mere fact of admission to the practice of law would not seem to be sufficient. Although it may be politically unpalatable, the Law Society would have to discriminate between practitioners - with the assistance of student feedback and independent professional rating - to decide which practitioner shall be permitted to take on articling students and which shall not.¹⁸ Failure to undertake this qualification of principals can be unfair to students in two ways. First, it implies that the profession has a double standard for its own members and

¹⁸ It is not beyond the realm of possibility that such "approved" firms obtain government subsidies for their provable education costs, in the same way as the government finances teaching hospitals. Doctors found that an overwhelming number of those students who interned with hospitals not affiliated with universities failed their final medical examinations. The standard of instruction in these hospitals was found to be very poor, and the level of exploitation rather high. Today, only university-affiliated teaching hospitals get government grants for interns' salaries; conversely, only internships in these hospitals are accepted as credit toward the one-year internship requirement.

for students; while the students are expected to meet and exceed minimum standards both at law school and in the Bar Ad Course, no standards of competence or effort in legal education are set for practitioners. Second, as the highly-competitive Bar Ad Course is designed to remedy the gaps in articling, and certain benefits can be derived from success in the Course, the examinations may be unfair to those students who received minimal training from their principals.

If articling is retained, the professional association would do well to create some form of central hiring of students, or an improvement in the current method of matching students with job openings. The practitioners' obsession with students' marks and the "practicality" of their courses selected can have a distorting effect on the LL.B. program. If the accepted major premise of the LL.B. as presently constituted is that it is not intended to give "practical training" in law, then it should not be open to the profession to intimidate students, with the threat of articling unemployability, into trying to extract something from the LL.B. which it was not designed to provide. From the law firms' point of view, the interviewing of as many as 100 students is time consuming and expensive.

There are, however, three factors which would make it difficult to persuade the legal profession in Ontario to dispense with some form of articling. First, articling is a long-standing tradition, a part of the legal culture in Ontario; over time it has taken on a symbolic value which may far exceed any objective assessment of its educational benefits. Secondly, the better lawyers (especially Benchers) may recall their own classmates when thinking about law students, and may judge the educational needs of today's law students by that standard, even though the former "bottom of the class" has been raised substantially by contemporary enrolment pressures. The third and most important factor will be the lawyer's contact with his own articling students; many will appear to be rather ignorant of practical matters, and perhaps lazy or unmotivated. But considering that the student is paid about two-thirds the salary of a legal secretary (while his debts may be mounting), is accorded a lowly status in the firm, and little of importance may be assigned to him or expected of him, it is not too surprising that few articling students will be very impressive. The awareness that his articling is still preparatory training, a form of "rehearsal" for practice, makes it somewhat less than real to him, which is bound to affect the motivation and

performance of all but the most aggressive student. The same student accorded the responsible, respected position of having "arrived" as a fully-fledged lawyer, would probably show a substantial improvement in his confidence and performance. This may explain why the graduate of the Bar Ad Course, only a short time later, seems to be more polished than the articling student. Attitude or motivation may be a larger part of the apparent improvement than the benefit of what he actually learned during the Course.

5. Shortening the Bar Admission Course, Combining it with Articling in One Year, or Eliminating Both

There have been three basic methods suggested for combining articling with the Bar Ad Course in a one-year post-LL.B. program. None of the three has any important advantages besides a 6-9 month contraction in length: all have serious negatives.

A. Six months of articles, followed by a six-month Course would effect the necessary contraction. However, it has all the disadvantages of reducing articling from 12 months, as discussed above. Also, since Course enrolments are growing rapidly, it does nothing to alleviate the expected space problems at Osgoode Hall.

An alternative version of this 6 month/6 month proposal involves dividing the class into half, with the first group taking the six-month segment as above, the second

group taking the Course first and articling later. A 1968 survey conducted by the Ontario Branch of the Canadian Bar Association showed that the great majority of students felt that the articling period should precede the Bar Admission Course, so this alternative is unlikely to be adopted. While it would help the space problem, a student would not derive very much benefit from taking a course designed to fill in the gaps in articling, before he has articulated.

B. Nine months of articling, followed by a 3-month Bar Admission Course (as in Quebec) would tend to create the same discontinuity problem for the firm's articling program. Obviously a 3-month gap between students is better than a 6-month gap, but the lawyer still cannot count on having a student there at all times. A 3-month Bar Ad Course would necessitate a decrease either in the number of the courses offered (and therefore, in breadth), or in the length of time occupied by each course (i.e., in depth). It is by no means clear that the present concept of the Course, as a comprehensive practical training in all aspects of law commonly found in office practice, can be successfully executed in 3 months. Anything shorter than the six-month course may not be worth retaining.

C. Articling during the daytime, with a 6-12 months Bar Ad Course at night, recreates some of the pre-1957 problems found with concurrent office work and lectures. Both suffer, as the firms tend to be unsympathetic to students taking time off to study for exams, and many students find it difficult to work the long hours demanded by law practice and then to study. Nevertheless, if any of the three proposals is adopted, this one is the most likely. Its major advantages over the other alternatives are: that it would permit (indeed necessitate) decentralization of the Bar Ad Course from Toronto to several locations in the province, to be near where the majority of students article, and that it would no longer require the practitioner-instructors to take half-days off work every day for two or three consecutive weeks (greatly reducing the inconvenience to the 300 practitioners involved, and perhaps allowing some saving in instructors' salaries). If the same volume of materials were handed out, the course being spread over 12 months but with fewer lectures, it could require only one or two nights per week, with examinations given on the week-ends. However, a combined office-course system has never been a very satisfactory compromise; many Ontario lawyers who have experienced it would probably oppose it vigorously.

One possibility (which has not yet been widely suggested) is to eliminate articling entirely, but to retain a 3-6 month Bar Admission Course immediately after the LL.B. The student would then be called to the Bar in the Fall. While this would clearly be a time contraction of 12-15 months, there is the real danger that the motivation problem already evident by second or third year of law school would create an overwhelming disinterest in yet another classroom learning period, without the break provided by the interjection of articling. Of course, one could choose to ignore motivation problems, or try to force "interest" by the pressure of a cram course or the fear of examinations. But this would be tantamount to admitting the educational bankruptcy of the Course; the "flagellation theory of education" has long ago been discredited.

Finally we come to the question of whether the Bar Admission Course could be eliminated entirely. This is a very complex issue, because the Course involves several functions - a remedy to gaps in articling exposure, practical training by specialists, licensing examinations, and certification of a minimum level of practical competence for those who want to start as solo practitioners. Nor can the Course be looked at

in isolation from the other two phases of legal education. The issues tend to be obscured by the presence of such clichés as "the protection of the public", "minimum standards," and "practical education." The various functions of the Course will be discussed sequentially.

The "remedy of the gaps in articling" function is somewhat unsatisfying because it suggests either the application of "Parkinson's Law" (i.e. work expands to fill the available time) to legal education, or the adoption of a principle of infinite regression. (Articling is necessary to remedy the weaknesses of the LL.B; the Bar Ad Course is required to fill the gaps in articling. Then perhaps another year of law school after the Bar Ad Course to help the student learn all the law that has changed since he took the courses in law school?) This line of reasoning merely highlights the need to do the job properly the first time, instead of putting bandages on the bandages.

As for the advantages of practical training by specialists, there is something contradictory in the whole notion of practical training taking place in a classroom by means of reading lecture notes. It reveals the "exposure" fallacy which underlies both articling and the Course. The theory is that "if we don't let the

student do very much, but let him watch how specialists do it," he will learn a great deal with very little danger to the public in the process. The educational value of mere exposure peaks rather early, and is easily over-rated. In teaching hospitals, as a contrast, interns actually do things, under the supervision of doctors; by the time the general practitioners approach qualification as specialists in, for example, surgery, the senior residents are doing most of the actual surgery, while the licensed specialist stands by to advise or help if necessary. Since the dangers to the public from incompetent medical treatment are generally far greater than the analogous problem with legal services, the attitude of the legal profession would appear to stem from an extravagant caution, which may actually, in the long run, be against the public interest. It reflects an attempt to insure against incompetent lawyers by sheer length of training. Perhaps there has been an exaggerated concern with preventing the accreditation of even a single incompetent practitioner (with no consideration of maintaining standards following admission); the screening function can probably be accomplished as effectively in a fraction of the time. As post-LL.B. training has the effect of channeling LL.B. graduates into the present, rather narrow categories of

legal services (by means of both socialization and job placement), the general public, given the choice, might well be willing to tolerate the LL.B. graduates' first 3-6 months of fumbling in practice, in exchange for the elimination of the economic and social costs of post-LL.B. training.

Licensing examinations are another function of the Bar Admission Course. But there is no reason why these particular examinations are the only ones possible. If the content of the Course is dispensed with, most students probably would not have the knowledge to pass the present examinations. However, it is a safe bet that most practitioners could not pass them either after having been out in practice for more than two or three years. This suggests that the ability to pass any particular set of examinations is not per se essential to the practice of law. Therefore, if some form of examination is considered indispensable, a new set of examinations can be prepared to test what knowledge students are actually likely to have.

The objectives of the Course, as described in the Calendar, are: first, to prepare students for private practice, and, second, to ensure that no one is licensed to practice without having acquired at least "some degree of competence in handling these situations in all the basic fields of law." These goals are considered particularly

important for those students intending to start their own practices immediately after the Call to the Bar. How well the Course actually accomplishes the first of these objectives has been discussed above. The second objective may have been rendered obsolete by the changes since 1957 in the conditions under which law is taught and practised. Since the LL.B. standard of admission has been steadily rising, the "minimum standards" of law students are probably by now considerably higher than that contemplated by the Course. Secondly, as the solo practitioner is slowly becoming extinct (and even fewer today can afford to start on their own), the urgency of practical training prior to licensing has greatly diminished. Hence the need for a course after the LL.B. is considerably less than it was in 1957.

Of course what changes were made to the length of articling would be an important consideration in deciding whether to eliminate or retain the Bar Ad Course. Since articling provides some practical training, an acceptable articling program makes it easier to justify deleting the Course.

If both articling and the Bar Admission Course are abolished, two potential problems are created:

- i) With the LL.B. program as presently constituted, the student would receive no practical training prior to his Call to the Bar.

- ii) Because the Law Society would not want to re-examine the student on his law school courses (this would both insult the law schools and interfere with their curricula) there is nothing else on which the Law Society could examine students.

Neither of these is insurmountable. First, an objective re-assessment of legal education requires that nothing be sacrosanct, including the LL.B. (particularly the third year, which should be very much "up for grabs"). If it is found to be a valuable improvement, injecting a modicum of practical training into the law school cannot be out of the question. On the other hand, it has yet to be demonstrated that in the long process of development from a B.A. graduate into a seasoned lawyer, no responsibility can be given (even after the LL.B.) until a practical course has been completed. Those states in the U.S. which have post-LL.B. articling (Delaware, New Jersey, Pennsylvania, Rhode Island and Vermont) are not noted for the quality of their Bench or Bar; however, those states with the most highly praised legal systems (e.g., New York, Massachusetts, California), have admitted thousands of lawyers with no practical training after law school. Although the inexperience of the new LL.B. graduate might be a source of annoyance to the law firm for the first few months (but probably no more so than that of articling students under the current system), the American experience

shows that the danger to the public is minimal; because the firm is liable in any case for the negligence of its employees, the public would be no less protected (and the firm's incentive to supervise would be no less) than it is under the current system.

However, the small percentage of LL.B. graduates who would start practice on their own could be a problem. Apparently it has not been found necessary to guard the public against this in the U.S. Nor can it be considered reasonable to require the 93 per cent of 1970 graduates who did not start in solo practice to complete the Course for the sake of ensuring the qualifications of those 7 per cent who did. If the protection of the public from this small group is still seen as a major concern, it is possible to impose a temporary restriction on the new lawyer's license to practice, analogous to that of the medical intern (who is only licensed to practice in a hospital). His licence might stipulate that the lawyer could not practice except as an employee of a lawyer who has been in practice for at least three years; the restriction could be lifted after one year, when the lawyer could set up his own office. This would safeguard the public as much as presently, while inconveniencing a small minority, rather than the great majority of graduates. As for the second potential

problem, the inability of the Law Society to give students a Bar Examination on practical law if articling and the Course were abolished: the question "why have a bar examination?" should be raised, given our present state of knowledge about examinations. Nobody would deny that the Law Society has the statutory duty to determine who is fit to be licensed to practice law, but nowhere does the statute specify the manner in which this duty is to be discharged. The general principle of law governing licensing bodies is that the criteria for licensing cannot be irrelevant to the purpose of the licence, but within this broad area of relevance the licensing body is free to set whatever criteria it wants¹⁹ and to measure compliance with these criteria by means of any technique it chooses. If, in its judgement, the Law Society were to conclude that post-LL.B. "practical training" is unnecessary, and if it accepts the qualifications of the law schools to determine who shall obtain an LL.B., then the Law Society is under no obligation to create a separate set of examinations to be passed before admittance to practice.

In fact, there is considerable evidence suggesting that Bar examinations are not relevant to the practice of law,

¹⁹ Subject also to the statutory requirement that the lawyer be of good moral character.

and therefore ought not to be imposed as a precondition to licensing. In an exhaustive study of a large series of tests on college grades and adult achievement in the U.S., the American College Testing Program stated that:

We can safely conclude that college grades have no more than a very modest correlation with adult success no matter how defined.²⁰

This survey covered 47 separate studies, including several on engineers, doctors and lawyers. The reasons given for the conclusion apply equally well to bar examinations:²¹ there is no necessary relationship between what a person knows and what he does with his knowledge; skills, ambition, imagination, and personality may be much more important indicators of competence than the ability (or even the concern) to demonstrate acquired knowledge; significant sources of error are created by "test-wiseness" and sensitivity to instructor biases; the "knowledge" measured is largely transient.

As the evidence of the irrelevance of examinations to professional competence becomes more conclusive, it is not beyond the realm of possibility that in the near future a disgruntled student who fails his bar examinations but has fulfilled every other requirement will be granted a writ of mandamus requiring the Law Society to license

²⁰ A.C.T. Research Reports, No. 7, September, 1965.

²¹ Which actually measure nothing more than the ability to pass bar examinations.

him to practice, on the ground that the bar examinations are not relevant to determine his fitness to practice law.

The ultimate argument against the Bar examinations in Ontario is that hardly anybody ever fails them. Unlike Quebec, where some 38 per cent failed the Bar Examinations last Spring,²² the Ontario failure rates in the last three years are:²³

	<u>Passed</u>	<u>Failed</u>	<u>Total</u>	<u>Failure Rate</u>
1968	353	5	358	1.4%
1969	400	10	410	2.4%
1970	447	12	459	2.6%

If the Bar Examination does not really measure the ability to practice law, and if, as a screening device, it affects very few candidates, then what might the true function of the Bar Examination be? Why do American Bar Associations cling so tenaciously to the right to examine, in spite of the widespread lack of faith in the technique? The probable answer is that the bar examination is more of a symbolic exercise of the control and power of the professional association over the lawyer than any meaningful attempt to measure qualification to practice. The Honourable J.C. McRuer described the powers of self-governing bodies as falling under two headings:

²²Source: Professor Perry Meyer, Faculty of Law, McGill University.

²³Source: The Bar Admission Course. If supplemental examinations were allowed, the failure rate would probably be even lower.

- (a) The power to license; and
- (b) The power to²⁴ regulate the conduct of the licensee....

Lawyers are aware that unused powers tend to atrophy. Failure to examine may lead to the loss of full control over licensing. Thus the bar examination is, in a fraternal initiation context, a form of power proclamation ritual which says, in effect, to the initiate, "Never forget from whom it is that you draw your license to practice." On the public side, the well-deserved reputation of bar examinations as being an exhausting ordeal for most students, when combined with a diplomatic failure rate, serve to maintain the illusion of an extraordinary professional concern with public protection, at a relatively low cost.

Apart from this symbolic value, the public can be quite adequately protected without bar examinations, given the degree of authority the Law Society already has over the law schools, through the control of law school curricula and examinations.

Having said all this, it may still be desirable to have some small amount of practical orientation, for

²⁴ Royal Commission Inquiry into Civil Rights, Vol. 3, p.1165. See particularly Chapters 79,80,81.

reasons of efficiency. If 700 new lawyers are graduated in one year, it cannot be efficient for 700 senior lawyers to show each of them individually "where the courthouse is." Probably there will be some economies effected by having a very elementary form of practical instruction. However, if this is really valuable, there is no reason why it must be made compulsory, nor why it cannot be conducted immediately after the Call to the Bar. Presumably the new graduate will see its value and will attend, perhaps under some influence from his seniors. If it does not seem worthwhile to the intended beneficiaries, then practical education by conscription is not likely to be the answer.

6. The Example of Medical Education

Medical education, in contrast with legal education, fully integrates theory and practice in the same curriculum. This is undoubtedly facilitated by the availability of hospitals as a teaching plant, the analogue of which has yet to be created in legal services, although a few law schools in Canada have begun experiments in "clinical training" through the creation of neighbourhood legal aid offices in poverty areas. McGill University, for example, this year opened an office in Montreal's tough Point Saint Charles district, allowing students two hours

of weekly clinical work in the office as the equivalent of two hours of classroom credit. Enrolment must be concurrent with the Law and Poverty course, and the program is run by a practitioner who supervises the "clinic" and also teaches the course. The unique feature of the McGill effort is that the Bar Association (equivalent to Ontario's Law Society) is jointly supporting the experiment. Somewhat similar clinics are being started by law schools at Dalhousie and Queen's.

The medical schools seem to be far more sophisticated than the law schools in many areas unrelated to clinical training. The planning of medical curricula, the high value placed on the human factors involved, and a far stronger sense of purpose are strikingly apparent in a comparison of the two educational programs. As an illustration, the proposals for a new medical curriculum (now adopted) at the University of Toronto are outlined below. If the word "legal" is substituted for the word "medical" throughout, these proposals could be introduced as a legal education curriculum with very little change. Particularly noteworthy is the tone, the manner in which the proposals have been developed and presented:

- 1) The articulation of premises .
- 2) The clear definition of objectives .
- 3) The consideration of educational climate as well as (or even ahead of) curriculum .

- 4) A mechanism for evaluating the performance.
- 5) The involvement of students in the planning, conduct and evaluation of the curriculum.

University of Toronto, Faculty of Medicine, Proposals for
a New Medical Curriculum

Premises

- (1) Medical education is a life-long process.
- (2) All current medical knowledge and skills cannot be conveyed to the student in a four-year program.
- (3) The rapid expansion and increasing sophistication of biomedical knowledge will continue.
- (4) The relationship of medicine and the community are likely to become increasingly more intimate and complex.
- (5) The medical curriculum must be continually under review to keep it abreast of changes in the characteristics of incoming students, the development of scientific information, and the needs of society.

Objectives and Scope:

1. To fashion a climate for learning which will:
 - (a) develop the full potential of each student;
 - (b) endow the student with knowledge, skills, values, attitudes and professional and ethical principles basic to the furtherance of any career in medicine;
 - (c) instill a desire and capacity for continuing self-education;

- (d) make the student constructively critical of all he sees, hears, or reads so that he may adapt the valid and discard the questionable;
- (e) instill in the student a determination to provide conscientious care with scientific and clinical excellence without losing a sense of compassion and sympathetic understanding;
- (f) make the student aware of the function and the need for co-operation with other health-welfare and educational agencies in the community available to assist him in caring for his patients;
- (g) make the student aware of his responsibilities not only to the individual patient but also to the community at large in terms of the socio-economic and cultural setting in which medical practice is carried on.

2. To evolve a curriculum which:

- (a) is an integrated unit and not a series of hurdles to be surmounted and left behind;
- (b) presents an orderly progression of relevant information, knowledge and skills;
- (c) emphasizes the interdependence of the biological, behavioural and clinical sciences;
- (d) recognizes the variations of premedical backgrounds, individual interest of students and choices of future careers in medicine.

3. To monitor and measure the performance of the curriculum by the best methods available, in order to assess its effectiveness in terms of the professed philosophy and objectives of the Faculty.
4. To organize the Faculty in such a way as to allow for change in both Faculty organization and curricular policy as developments may require, ensuring all desirable stability.
5. To involve students in the planning, conduct and evaluation of the curriculum.
6. To organize the undergraduate teaching function in such a way that (a) the staff of the departments will be able to continue effectively their scholarly pursuits and research, and (b) the graduate training program shall be encouraged to flourish.

The actual content of the curriculum described in the Calendar of the Faculty of Medicine, University of Toronto grows out of these proposals. The examination system is interesting in that the comprehensive (written) examination is weighted at only 20 per cent in the overall assessment of a student in the work of a year (not all periods are one academic year in length). 80 per cent of the weighting is from in-course assessment, the nature of which is geared to the particular topic or system being learned. The method of assessment for each

course is determined by the Chairman of the appropriate System or Topic. Both knowledge and skills are tested. The first objective of in-course assessment is that it shall not be so frequent as to compromise either the efficiency of the assessment or the learning process.

7. Student Involvement and Student Power

As is the case with other student groups, law students are to some extent involved in the planning and evaluation of legal education.

In the law schools, students may be represented on the faculty council (as well as some of its committees). However, the influence of these "representatives" is weakened because their opinions are often strongly divided, or felt to be elitist and hence unrepresentative of the student body. The student body is not surveyed, nor is there any widespread evaluation by students of professors' abilities or of course utility and content. While other faculties are experimenting with course evaluation, ironically the law schools, who have just introduced a new program with a myriad of options, have shown little interest in evaluations, with one exception.²⁵ The probable reason is that the law schools have been too busy

²⁵ The University of Western Ontario law school is introducing course evaluation, but this is part of the planning of the entire university, not the particular initiative of the law school.

creating new courses, and teaching them, to find the time for evaluation and student feedback. If the calibre of the teaching and relevance of the courses is generally very good, then little has been lost by the failure to measure results; on the other hand, if much of the instruction has been inadequate and many of the courses irrelevant, being too busy teaching is merely the way to avoid finding out the "customers" rating of the value of the service.

At the articling level the arrangements are made between individual firms and students. There is no union or association of articling students, nor any special association of firms which take articling students. Because any individual student has little bargaining power with his employer (who is ostensibly finding him a financial loss), student involvement in the planning of articling assignments will vary with the generosity of the principal and the developing mutual evaluation of the desirability of permanent employment after the Call to the Bar.

During the Bar Admission Course, the Director consults students on matters relating to the running of the Course, but not on questions of basic policy or curriculum, (the Director does not decide these himself).

Students are found on that most important body, the Legal Education Committee, which has the ultimate control over all phases of legal education in the province. This is exclusively a committee of Benchers. Its meetings are closed, as are the meetings of the full Convocation of Benchers (which must approve all the important decisions of the Legal Education Committee).

Several reasons can be suggested as to why student power has not been manifested at the post-LL.B. stage.

It has often been said that law students are more conservative than other students, preferring to work from within the system rather than rebelling against it. Today's law students, however, are much less conservative than students five or ten years ago; it is much more likely that they could overcome their distaste for rebellion if it was felt that something definite would be accomplished. But past experience has shown that the Law Society is unmoved by demonstrations and far too politically astute and well-connected to be easily pressured into anything. Special committees can be, and have indeed been set up to divert and diffuse the pressure.

A possible strike of articling students would not likely be effective given the economics of the articling situation, since most firms would probably be able to live with the absence of students for a year much more easily than the students could bear to defer their

admittance to practice for a year; moreover, the blue-collar stigma of striking against employers would probably be unacceptable to the professional self-image of most would-be lawyers, making a strike an almost impossible tactic to sell to articling students.

By the time the average law student reaches articling or the Bar Admission Course, he is no longer ripe for student revolutions. He is probably married and in debt, with student loans accumulated over six or seven years of post-secondary education (perhaps including his wife's student loans). The end of the road is in sight. Knowing that he is nearly through, it may be easier for him to put up with almost anything, the top priority being just to get out and start making money as soon as possible. Furthermore, the constant pressure of work and examinations, coupled with the fact that students from all over the province, previously strangers, are thrown together for only a six-month course, render it improbable that any form of protest can be mounted during the Course. The very length and load of the Course militate against effective pressure to reduce it.

Finally, perhaps the most important reason for the apparent docility of law students is fear of the profession and of the Law Society. A conservative, rule-oriented profession such as law would probably be opposed

to radicalism within its own membership. Radicalism is not lawyerlike. Since most student power movements have required some leadership, the instigators of law student power, whether successful or not, might find it difficult to obtain employment (or the clients necessary to open their own firms) upon graduation from the Course. Any possible gain, for the leaders, would be far outweighed by the probable cost. As most of the very large firms are represented on the Law Society by a Benchers who is a member of that firm, the same individuals both control the legal education process and strongly influence the job market for its graduates. Not surprisingly, therefore, the latest Special Committee set up to study legal education was not invoked by student pressure; it was created in response to a resolution passed by practicing lawyers (including large numbers of Course graduates of the last ten years) who are now well enough established that initial unemployment is no longer a threat to them.

8. Summary

The differences between the two groups of lawyers (academics and practitioners) have been reduced from open hostility to wary but peaceful coexistence. Each does its own job in legal education with little interference from the other and, unfortunately for the student, with little integration of curriculum or even of basic

objectives. The length of the program is chiefly attributable to the unwillingness of the two groups to combine phases, the result of which is a sequential, uncoordinated process.

The Law Society officers interviewed appeared to be open to the possibility of shortening the post-LL.B. period. However, any contraction (or combination) of articling and the Bar Admission Course is fraught with practical problems. Retention of the status quo or outright elimination of post-LL.B. training may be the only effective alternatives.

In contrast to the flexibility of the Law Society officers, the Law School Deans were positive that the three year LL.B. curriculum could not safely be shortened to two years. Behind the mythology, the specialization rationale of the third year is rather tenuous; the evidence of student disinterest and the unavailability of specialized course options to many of those who request them, strongly indicate that the insistence on three years of law school is heavily influenced by factors unrelated to educational values. The enhancement of the academic strength and prestige of law schools, while of undoubted importance, should not be a primary consideration in the decision as to how many years students will be required to spend at law school; nor should mimicry of the current

American program operate as a constraint upon the shortening of this province's LL.B. training.

In view of Ontario's adoption of the American program of legal education in 1957, given the almost universal American practice of licensing immediately after law school (subject to a memorization-oriented bar examination), the case for "practical courses" as a prerequisite to admittance to the Bar is rather difficult to make. The desire to maintain the post-LL.B. training period, when one looks behind the clichés such as "protection of the public," is hard to justify as a net benefit, on any rational criterion. If post-LL.B. training and examinations are continued in spite of the rather compelling evidence against them, their retention would appear to be based on benefits which are unrelated to legal education, such as the maintenance of the institutional values of the professional association.

The recommendations of the Honourable J.C. McRuer in relation to the power of self-government given to professional associations would seem to be highly relevant to legal education:

The traditional justification for giving powers of self-regulation to any body is that the members of the body are best qualified to ensure that proper standards of competence and ethics are maintained. There is a clear public interest in the creation and observance of such standards. This public interest may have been well served by the respective bodies which have brought to their task an awareness of their responsibility to the public they serve, but there is a real risk that the power may be exercised in the interests of the profession or occupation rather than in that of the public. This risk requires adequate safeguards to ensure that injury to the public interest does not arise.²⁶

The inability of law students to exert effective pressure against the profession during articling and on the Legal Education Committee during the two post-LL.B. phases has been an important factor, both in the exclusion of students from planning and evaluating the total process, and in the absence of reform in or shortening of the program.

The principles and objectives contained in the new medical curriculum of the University of Toronto can be fruitfully adapted to legal education in Ontario. More importantly, the sophisticated reasoning behind the medical curriculum, and the continuing, organized self-criticism, form an appropriate model for lawyers in the creation and administration of an integrated system of legal education.

²⁶The Honourable J.C. McRuer, op.cit., p.1166.

VIII. Conclusions

The conclusions in this chapter are intended to be related to the issues raised in Chapter I, and should be read in conjunction with that chapter.

1. Socialization

The attitudes conveyed to students by law school and post-LL.B. legal training tend to conflict. Law schools attempt to inculcate a sense of the lawyer as a public servant; however they also impart a critical view of legal practitioners and of the judiciary.

The post-LL.B. period, by its very existence, will tend to reflect adversely upon the practicality of (and therefore, in a practical profession, the value of) law school teaching. Also, in spite of the professed concern with dedication to public service, the environment, curriculum and treatment of students during articling and the Bar Admission Course in fact communicate a much greater regard for professional self-interest.

The job placement aspect of post-LL.B. training ensures that the profession gets the last word in legal education, hence will probably be the more powerful socializing influence; moreover it has the narrowing effect of channeling students' career choices into the current market for legal services.

It is the sequential organization of the phases of legal education which permit these conflicts to remain unresolved. If the two phases were integrated into a comprehensive program to graduate a fully-qualified lawyer, this might prevent each group from communicating to students attitudes which are hostile toward the other group. With an integrated curriculum administered by the law schools the somewhat more idealistic outlook of the law professors would tend to be the stronger socializing influence, but an anti-practitioner viewpoint would be precluded. As between the attitudes of the two groups regarding the role of the lawyer in society, the idealism of the law professor is to be preferred, at this stage, to the pragmatism and business-orientation of the practitioner. Law schools should therefore have the greater control over the socialization of law students up to the time of the call to the Bar (subject to the influence of the profession to ensure that negative attitudes toward legal practice and practicing lawyers are not also communicated).

2. Shortening and Integrating the Curriculum

The present system of post-LL.B. practical training prevents law school graduates from performing any legal services beyond those which other members of the public are entitled to do (e.g. Division Court or Provincial Court appearances) for virtually two years. The assumption is,

in effect, that until the student is licensed to do everything, he is qualified to do nothing. This limitation is not only costly to the student, but by keeping him from practicing law, can retard the growth of his professional competence. While the Ontario law student is working as an articled clerk for his principal, or attending classroom lectures on how to fill out legal forms, his American counterpart, with the identical law school training, is out learning by practicing law. This is not considered dangerous to the public, as he is most probably working under the supervision of experienced lawyers.

In Ontario, less than 10 per cent of lawyers graduating this year started practice on their own; most joined law firms, which, as employers, would be liable for them. If post-LL.B. training were abolished, this proportion probably would not change. Therefore, in the case of 90 per cent of newly graduated lawyers, the public would be as well protected as it now is if, similar to the U.S., LL.B. graduates were allowed to practice without further pre-licensing training. It is surely unnecessary in the name of public protection, to require 90 per cent of law school graduates to complete a 2-year post-LL.B. training program for the sake of the potential risk of the 10 per cent who would start on their own.

If the potential risk from this small minority is seen as being so serious, the terms of the license to practice could

include the condition that for the first year the lawyer can practice only as an employee of another lawyer with a minimum of three years' experience.

If protection of the public is no longer the primary reason for retaining the length of the current system, the explanation must lie elsewhere. It should be recalled that the present requirements were determined by a process of adversary negotiation between the Law Society and the law schools in 1957.

Both classes of lawyers (academics and practitioners) today have a vested interest in maintaining a long curriculum. From the viewpoint of the law schools, the longer the total period of legal education, the greater will be the likelihood of being able to maintain intact the academic prestige of the somewhat over-long three-year LL.B. For the practitioner the post-LL.B. period has an important recruiting function; moreover, the longer the pre-licensing training process (which is mostly at the expense of the taxpayer and of the student himself) the less his subsequent training will cost the firm. The interests of the former group have been clouded by the unimpeachable aspiration to "higher standards" or "specialization"; the cliché of "protecting the public" has obscured the interests of the latter.

In light of the American experience with the LL.B. for more than half a century, even if no concession to practical training is made in the Ontario law school curricula, the LL.B. graduate can probably be licensed to practice immediately, with no significant danger to the public. Any proposal to extend the length of training before licensing which is justified on the basis of public protection should be regarded with considerable scepticism.

If the law schools were willing to introduce even a small amount of practical training into their curricula, the perceived need for some form of practical training before admission to the Bar could be satisfied. Nor would it be easy to demonstrate that the inclusion of some form of practical experience as part of the law school curriculum would not represent a substantial improvement to the present LL.B. program. Apart from pedagogic problems of a relatively minor nature, the primary barrier to an integrated theory/practice curriculum (such as in the educational systems of other professions) is political.

Having won the battle for public sympathy in 1949 and 1957, and thus beaten off the Law Society, the law schools now seem to take for granted the inviolability of their three-year curricula. The predominant feature of Ontario law school teaching has been the rather uncritical acceptance of the American model of legal education, the

LL.B., which is intended to provide academic training in substantive law. Unfortunately, the LL.B. has its weaknesses in terms of practicality (the U.S. law schools readily admit this, and are now searching for improvements). However, Ontario law schools seem determined to prevent their "standards" from being "lowered" by the inclusion of any practical training. Such training should, in their view, be given after the LL.B.; or it would appear that the bogeyman of the "trade school" may once again be raised.

As law is a practical profession and the law schools teach virtually nothing practical, this attitude of the law schools lies at the root of the problem of length. Given the continuing demands of students for greater practical emphasis during the LL.B. program, it would be somewhat perverse and irresponsible for Ontario law schools to insist on the rigid adherence to an American legal curriculum which itself is being seriously re-evaluated in the U.S.

[In fairness to the law schools, however, it should be noted that the low weighting of the basic income unit assigned for provincial formula financing (weighting of 1.5) creates serious financial restrictions on the schools' ability to attract the calibre of law teachers they would like. The "ideal" law professor that the schools are looking for today probably has five to seven years of practice following

an excellent academic record (and perhaps an LL.M. as well). At this point in his career he is on the verge of being given a partnership in his firm, which would raise him to the next plateau of income and responsibility. The associate professorship usually offered by the law school would not be likely to match his then-current salary. Although financial gain obviously cannot be the primary inducement to a successful practitioner to give up his practice in order to teach, unless the monetary benefits are sufficiently close to his present situation, the non-monetary satisfactions of teaching will not be great enough to offset the immediate drop in his standard of living. This does in fact appear to be an important problem, given the relatively low starting salaries the law schools can presently offer.]

Paralleling the reluctance of the law schools to make compromises in the direction of practicality is the refusal of the professional association, even as lately as 1957, to give up the administration of practical legal education. The Law Society does have the statutory duty to regulate the qualifications for admission to practice; however the overall control of curricula, and the actual teaching and administration of courses, are clearly separable functions. There is no statutory reason for the professional association to be in the business of full-time teaching of law

courses. Qualifications for practice can be and actually are today controlled by means of reviewing the content of law school curricula, and if necessary, by the Law Society setting its own examinations. To continue to teach courses (apparently, rather badly) in order to remedy the perceived defects of the LL.B. training is an oblique, ineffective method of attempting to discharge this statutory duty.

Surely it cannot be beyond the ability of the Law Society and the law schools to devise an integrated system of legal education which would graduate trained lawyers, ready to practice.

3. The Optimum Length and Content of the Curriculum

The optimum length of an integrated legal education course would appear to be approximately three academic years, consisting of two and one half years of regular academic law courses and one half year of practically-oriented training. (The latter need not all be at the end of the academic portion--there can be a growing practical emphasis throughout.) This conclusion is based on all the data produced by this study, with particular emphasis on the following:

a) The cost-benefit study (Chapter III) using practitioners' estimates of the monetary benefits, showed that the undiscounted net present values (calculated for only the first 7 years after the LL.B.) of the current program were large negative figures. The total (social) net present values

range from approximately minus \$19,158 to minus \$24,896 in the first seven years, of which the portion borne by the student ranges from minus \$13,940 to minus \$18,369. This is not because the costs outweighed the net benefits; the benefits were also negative figures, with no evidence that they would become positive in later years.

The often-suggested combined one-year articling and Bar Admission Course also produced negative figures (although not quite as large as the current system): total (social) net present values range from minus \$9,180 to minus \$11,768, of which the individual net present value was minus \$6,990 to minus \$8,853.

Since the kind of education being measured is practical training, the correlation between practical value and salary should be fairly high. Therefore it is not unreasonable to conclude that practitioners' ratings of salary levels indicate their belief that neither the current 22-month post-LL.B. program, nor the proposed 12-month contraction would be as beneficial to the student as the equivalent time spent in practice.

b) The sociological data in Chapter IV corroborated the findings of the cost-benefit study. The primary benefit of articling was felt to be the introduction to practical matters. Given the nature of articling, however, the practical experience is unlikely to be as valuable as the

equivalent 12-15 months spent in practice. (This is confirmed by students' specific criticisms of articling as involving too many menial tasks, which would be much less likely to be assigned if the students had been paid lawyers' salaries, presently about double the articling level.)

Overall, the Bar Admission Course was generally liked for its usefulness. However, this composite score was the product of a very high rating of the notes and materials provided, and a rather low value assigned to the method of teaching, the quality of instruction and the system of examination. If the primary value of the Course is the printed material handed out (forms, precedents, texts of lectures, etc.), most of the time spent in lectures is probably wasted. The materials could probably be mailed to students and the number of classroom hours reduced to a fraction of the present level with no significant loss in educational benefit.

Therefore it is unlikely that either of the present forms of post-LL.B. training is as effective as the equivalent time in practice. There appears to be no better way of learning the practical aspects of being a lawyer than by being a lawyer.

c) The interviews conducted, the examination of law school curricula and course scheduling (discussed in Chapters VI and VII), as well as the verbatim comments in the questionnaires (samples of which are given in Appendix IV), all suggest that at least half, and perhaps all of the third year of law school is only marginally productive.

The law schools themselves admit that most students are bored and impatient to get out by third year (or in some cases, even by second year). The "opportunity for specialization" in third year appears not to have cured this. Perhaps "specialization" through taking more academic courses is not seen as being relevant in a practical profession, where personal acquaintance with the judges, for example, might be seen as more important than behavioural courses in judicial decision-making. Probably any specialization is premature at this early point in the student's experience in law, because he is as yet unlikely to be able to make an informed choice as to what kind of legal practice he would like to specialize in. In any event, as the law schools are too often unable to give the third-year student several of the specialized courses he requested, the so-called "opportunity for specialization" in third year may appear to the student as a form of conscription into a year of non-practical specialization, often in courses he did not want, at the expense of the opportunity to practice law

one year earlier.

The chance to specialize in third year has been made available not only because of the optionalization of all second and third year courses, but also because of the reduction in the hours of most courses from 60 hours to 45 hours, coincident with the move to a two-year system. It is now possible to complete all the courses which were formerly compulsory in two or two and one-half years. Today the law student is required to take a greater number of courses than he was two years ago, before the new curriculum, in order to get his LL.B., the extra courses being "specialization." If, as suggested, specialization at this point in the student's career is of minimal benefit for most students, and if most students strongly desire a greater practical emphasis in law school, the occupation of at least one half of an academic year with some form of practical training would appear to be a better use of the time. This is particularly true if the alternative is post-LL.B. practical training of considerably greater length.

4. The Generalist or the Specialist Degree

One of the effects of the present Bar Admission Course is to conceal the urgent need to define and qualify specialists. In theory, if the Bar Ad Course qualifies everyone to do everything, then the problem of specialist qualification does not exist. In practice, about half of all practitioners in Ontario are now specialists (by the definition of spending

over 50 per cent of their time in one area of law) and the trend is growing. Whether or not there should be specialization in the legal profession is no longer an issue; specialization is here to stay. The only question for the legal education system is whether it continues to be in the public interest to ignore specialization, both at the licensing and the special training levels.

A consequence of disregarding the educational implications of specialization is the failure to recognize that increasingly, for today's graduates, general practice is becoming a specialty as well, since only a minority of today's graduates are general practitioners. The suggestion that the lawyer must first be qualified as a general practitioner, and only then can become a specialist is fallacious, because most of the recent graduates begin specialization immediately upon being hired to join one of the various departments of their law firms.

As we do not expect a specialist to become expert in a specialty other than his own, the case for the Bar Ad Course or for bar examinations requiring study of all areas of law is significantly weakened. There is little need (or perhaps no need) for an intended expert in wills and trusts to take the same course (or examination) in criminal procedure as the future criminal law practitioner. The question of whether specialty-oriented examinations would necessitate

restricted licenses to practice or whether general licenses could continue to be granted is beyond the scope of this study. But clearly, before the format of any successor to the present post-LL.B. training system can be developed, it must decide whether the program is intended only for the general practitioner (now in the minority) or for the general practitioner and for the full range of specialists.

5. Toronto/Balance of Ontario Legal Servicing Problems

There was insufficient data collected to provide any conclusion as to whether the necessity of teaching the Bar Admission Course in Toronto has aggravated the trends leading to legal under-servicing outside of the Toronto area. Two of the four Deans of the law schools located outside Toronto did express the view that the Course tended to induce many of the students who moved to take it to remain in Toronto, depriving the smaller urban and rural areas of badly-needed new graduates. However, these views were admittedly based on personal impressions, rather than on any detailed study.

If the teaching period of the Bar Admission Course is abolished outright, or decentralized to the several law schools across the province, the problem, to the extent that it is created by post-LL.B. legal training, will be eliminated.

6. Law Student Power and the Employment Function of Post-LL.B. Training

As discussed in Chapters IV and VII, the recruitment

value of articling is increasing; in 1970 about 47 per cent of students, subsequent to their call to the bar, were employed by the firm with which they articulated.

Thus the articling student not only wants to learn as much as possible from his principal, but also desires to be given an offer of employment, or at least, a good reference to another firm. This long-term interest would substantially diminish the short-term benefits of complaining about the assignment of too many menial tasks. It is not surprising, therefore, that the articling spokesmen of several large firms stated that their students, when interviewed at the end of their articling period, tended to describe their experiences enthusiastically and with a minimum of criticism. Every lawyer interviewed was quite ready to admit that a large proportion of articling students were discontented; however, almost all of the lawyers rejected the suggestion that some of their own students might be dissatisfied. Apparently the ability of the articling firm (in a profession where changing firms is relatively rare) to be of great benefit or detriment to the employment prospects of a student is not always conducive to a candid relationship between the student and the firm. Recruitment through the Bar Admission Course is considerably less frequent, but the long-run benefits/disadvantages of favourable/unfavourable impressions created are the same as with articling.

The opportunity to communicate negative views of post-LL.B. training to the articling firm, to the Bar Ad Course personnel, or to the Law Society itself, is the minor aspect of the problem; without the ability to exert effective pressure, given the vested interests of the professional association, the students' views are not likely to be heeded. The employment pattern in the legal profession (which is very different from that of doctors or dentists, most of whom can and do open private practices) is probably the single most important factor preventing law students from obtaining as much effective control over their education as other students have. Unless the teaching function is somehow separated from the employment function of legal training, there will always be a tendency for the profession to be less than sensitive to the legitimate complaints of students about exploitation by articling principals or about inept teaching methods during the Bar Ad Course.

Integrating the employment function with post-LL.B. training also has the effect of channeling graduates into the present market for legal services. If students were permitted to article in positions other than with law firms, such as with domestic and juvenile courts, welfare boards, housing agencies, consumer protection agencies, tenants' organizations, labour unions, etc., the predominantly

business orientation of the current practical training system might be somewhat broadened to serve a wider range of social needs. New options could also be included in the Bar Ad Course.

But, if post-LL.B. legal training were eliminated, the newly-graduated lawyer would be in a position to seek employment wherever his interests and job opportunities allowed, without being as strongly influenced by the profession to enter the regular office practice.

7. Decision-Making in Legal Education

Decisions about legal education in Ontario have not been made in an informed, objective manner, taking into consideration the needs of the public, the firms and the students. Most of the important decisions have been made in an atmosphere of hostility, during a time of crisis, as political settlements between the Law Society and the law schools. Added to the general tension between academic and practicing professionals is the uniquely Canadian conflict between the law professors favouring the objectives and methods of the American model of legal education and the professional association adhering to the British model. (The former is characterized by the academic law school, the latter by articling or practical training.) Rather than creating an integrated compromise between the two, or making a choice on an either/or basis, the antagonism of the two groups led, in 1957, to the adoption of these two very different approaches

to legal education on a both/and basis. The training of about half of the Ontario Bar (the graduates of the last 12 years) has been conducted under a curriculum negotiated by three men in the Royal York Hotel over a single week-end.

While the relationship between the Law Society and the law schools has improved considerably since then, the quality of decision-making would appear to be unchanged. In early 1970 the Law Society created a Special Committee on legal education, in response to strong pressure from recent graduates to reduce the length of post-LL.B. training required before licensing to practice. This is the sixth such Special Committee to be established since 1923. The history of the Special Committees reveals a pattern of decision-making which allows problems to grow, unresolved, until a crisis is generated, then creates a de-fusing mechanism which may or may not bring about long-overdue reforms. Tranquility is restored, and the cycle repeats itself.

The periodic regulation by special committee suggests that the job of planning and administering legal education with the requisite quality of leadership is beyond the capacity of the regular Legal Education Committee of the Law Society. Legal education in Ontario for some time has been too big and too complex to run on a part-time basis by practitioners who are also very busy with the management

of their own firms and the servicing of their clients.

It is now time to recognize that whatever compromise is reached, even by the present Special Committee, it cannot be a final solution. A system of continuing planning, evaluation and improvement is the only way to prevent recurrent crises.

IX. Proposals

It is proposed that:

1. An integrated three-year law course be established, at the end of which a fully-qualified lawyer would be graduated (without the requirement of a separate set of Bar Examinations). This course should be under the general administration of the law schools, but subject to the overall control of the Law Society.
2. Articling and the Bar Admission Course should be abolished, with the provincial budget now allocated to supporting the latter (both in grants to the Course and to students) being given to the law schools to offset their added costs.

Consideration should also be given to raising the basic income unit weighting of law schools to the graduate student level.

3. The proposed three-year course should consist of a total of two and one-half years of law school courses, and one-half year of practical training. The practical training can be spread throughout the curriculum or reserved until the completion of the academic part. Although options to suit individual interests should be allowed in both the academic and practical phases, no attempt at specialization should be made at this level.

4. The half-year of practical training (actually, 15 weeks) should consist of four elements:

a) The distribution of precedents, legal forms, texts of lectures and other useful materials, in looseleaf form. The cost of these could be financed by their sale to the profession as well as to students, in the manner of commercial services such as C.C.H.

b) The demonstration of well-conducted litigation by means of films, video-tape or closed circuit T.V. (similar to the Trial Practice seminars offered by Professors Borins and Watson at Osgoode Hall Law School).

c) The opportunity to develop practical skills through exercises in document drafting, client interviewing, cross-examination, etc., with the assistance of local practitioners.

d) Familiarization with local legal and community services through visits to registry offices, welfare agencies and courts, and through the possibility of participation in legal clinics (like the McGill University experiment described in Chapter VII).

5. A new position at the Associate or Assistant Dean level should be created at each law school. The persons appointed must have both academic and practical experience. Responsibilities would include practical training, professional liaison, the administration of a student placement service, specialization, and continuing legal education programs

for the local bar.

6. A fourth year could be offered at all law schools (either immediately upon graduation or at any later time) for those who want to specialize. This year should be heavily practice-oriented, and might be followed by the requirement of two years of practice with a recognized specialist prior to licensing in that speciality.

7. To make possible the planning and administration of an integrated system of legal education (consistent with the protection of the public and the involvement of the law student in the decision-making process), two new bodies should be formed (see Figure R-1):

i) A new Council on Legal Education should be formed by an expansion of what is now the Benchers' Legal Education Committee. This council should continue to report to Convocation as the Legal Education Committee does at present, but should not have a majority of Benchers; more than half the members should be law students, professors, or members of the public. Analogous to a Board of Directors of a corporation or Board of Governors of a University, this body should be responsible for the management of legal education (subject to the ultimate veto power of Convocation).

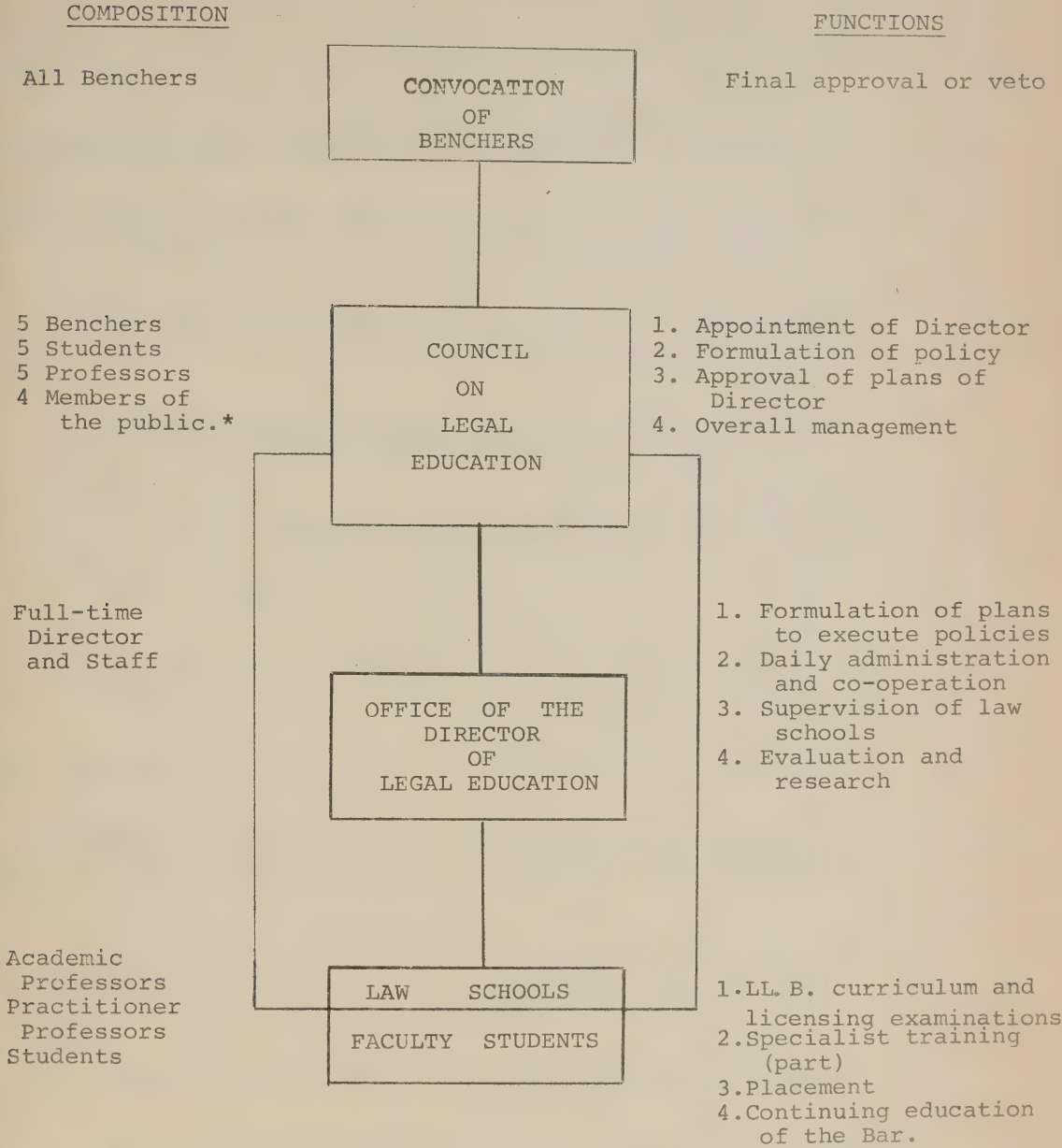
ii) The Office of the Director of Legal Education should be analogous in function to that of the president of a university

or large corporation. Reporting to the Council on Legal Education, the Director should be a full-time administrator, with academic and practical qualifications commensurate with the importance of the position. The office of the Director would be responsible for the administration of all phases of legal education, and co-ordination of the academic and practical segments of the curriculum. A small staff and a research budget would therefore be required.

Working in close liaison with the law schools, the Director would supervise the implementation of policies and plans approved by the Council, including admission and licensing examination standards, both phases of law school curricula, specialists' training and examinations, province-wide placement, and continuing education of the Bar.

With the recommended management and administrative structure, each of the various interests in legal education would be represented at the policy-making level, while the Law Society would continue to have ultimate control over the whole process. More importantly, perhaps an integrated academic/practical curriculum could be properly planned, implemented, and improved as needed.

RECOMMENDED ORGANIZATION OF THE GOVERNMENT OF
LEGAL EDUCATION



*Might include 1 Supreme Court Judge (not a former Bencher or law professor), 1 female consumer, 1 civil servant, or 1 businessman, etc.

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NOTE: Many of the calculations in the cost/benefit portion of the report are based on data contained in confidential documents such as the Law Society's financial submissions for 1969 and 1970 to the Department of University Affairs, and much of the information contained in Chapters VI and VII is derived from other confidential documents and interview transcripts. All of these have been filed with the Commission.

Research Methods and Questionnaire Design

A. Overall

The original research proposal submitted by Andrew Roman and Associates to the Commission on Post-Secondary Education in Ontario, in March 1970, envisaged only a cost-benefit study of articling and the teaching period of the Bar Ad Course; the proposed title was "Legal Education after the LL.B.". At the request of the Commission, the scope of the study was widened to consider two additional subjects:

1. The LL.B. program and the total legal education process (to the extent possible without covering the LL.B. in the questionnaire, which was to relate only to the post-LL.B. period).
2. "The Interface Between the Professional Association and the Law Schools".

To fulfill these requirements, four types of research were conducted, beginning in May 1970 and concluding in September 1970:

1. Background reading, historical research, study of all other available survey data on legal education in Ontario, and requesting cost data from various sources.
2. Interviews with students, practitioners, law professors and Deans, benchers, officers and employees of the Law Society of Upper Canada.
3. Pre-tested, broadscale, mailed questionnaire (with the assistance of AIM Limited, Consultants, specialists in original research design).

4. Computer tabulation of questionnaire data and economic analysis of cost-benefit figures (with the assistance of Professor Stager of the University of Toronto, whose services were generously provided by the Commission).

A bibliography listing library sources is included at the end of the report, as Chapter XI, and all other raw data (including cost information, contemporaneous notes made during interviews, pre-test questionnaires, completed questionnaires, computer cards, print-outs, etc.) will be deposited with the Commission upon acceptance of this report.

B. Mailed Survey

The survey attempted to study benefits and costs in monetary terms, and attitudes (to shed some light on the non-monetary benefits and costs) based on value judgments of those involved.

Objectives

Specific research objectives varied with the nature and background of the groups studied. Overall, five areas of investigation were covered:

- 1) Estimates of expenditure and income for the respective periods of Articling and Bar Admission Course teaching period.
- 2) Attitudes toward the legal education system in general and the relative value attributed to its respective parts, versus early practice.
- 3) Declared preferences between two alternative approaches

to admission to practice and the current method; estimated effects on practitioner income attributed to each.

4) Specific judgements on the Articling period and Bar Admission Course in terms of qualitative appraisal, curricula, length.

5) Information as to respondents' academic, vocational and/or socio-demographic backgrounds.

Study Universe

Three main groups, seven sub-groups, comprise the universe for this study.

a) Educators:

i) Law Professors at the six law schools in Ontario.

ii) Instructors in the Bar Admission Course.

b) Students:

iii) Articling students.

iv) Bar Admission Course students

c) Practitioners: classified according to their year of starting practice

v) Recent graduates - 1967-1969

vi) Those between the years 1957 to 1966, most having entered practice through the Bar Admission Course.

vii) Those prior to 1957, before the Bar Admission course was initiated.

Survey Method

a) The Method of Data Collection

This survey was carried out by personally addressed mail, sent out during the latter part of June and early July, 1970.

Each mail-out contained a questionnaire, covering letter on letter-head of the Commission, and pre-paid return envelope.

b) The Questionnaire

Draft questionnaires were developed for each of eight sub-groups, and pretested by mail in early June 1970. The primary purpose of this pretest was to aid in finalizing question design, although it also provided a very crude pre-measure of anticipated response rates.

Some 135 pretest questionnaires were sent (from 10-30 per sub-group) to judgmentally selected respondents. Both modification and reduction in length resulted from the pretest--alterations occurring particularly in the sections dealing with expenditure and income measurement.

In addition, the decision was made to delete LL.B. students from the study. This was dictated both by their restrictive frame of reference, indicated by pretest results, and by the anticipated difficulty of contact during summer vacation months.

Copies of the final questionnaires used for each of the seven sub-groups, together with covering letter, are included in the Appendix to this report. Colour coding used in the actual mail-out is shown for each version.

c) Sample Selection and Size

The sample frame for each sub-group consisted of lists made

available by The Law Society, and from the Canada Law List. Although these sources proved reasonably up-to-date and complete for the purpose, some problems of incompleteness were encountered. This held particularly in the case of Bar Admission students.

Random start points were used in drawing every ninth name within each sub-group, except Law professors and Articling students, for which a 100 per cent mail-out to available addressees was used. No stratification was used other than that employed in defining the basic seven sub-groups.

The number of mail-outs sent to practitioner and student groups was based on the objective of achieving a minimum of 150 responses for each sub-group. The response rate assumed varied between 35 to 45 per cent, premised on past general experience with (non-panel) mail surveying.

d) Sample Returns

The overall rate of response was 41 per cent, constituting 15 per cent of the estimated combined universe. This rate varied from a low of 30 per cent among pre-1957 Practitioners, to a high of 59 per cent among Bar Admission students. These figures are based on returns as of five weeks following the mail-out, the point established as the cut-off for tabulation purposes.

A summary of mail-out and response rates against estimates for the respective sub-group universes is set out at the end of this section (Table M1).

It should be noted that some of the universe estimates are approximations only; figures shown for practitioner groups exclude Bar Admission Instructors, who are of course practitioners as well.

e) Tabulation

Returns were initially screened for completeness, and examined for the purpose of developing pre-coding instructions for open-ended questions and a tabulation plan.

Returns for the two education groups were tabulated by hand. The balance were machine tabulated, print-outs for which will be placed on file at the office of the Commission.

f) Representativeness of the Data

Since the basic purposes of this survey were felt best served by treating the seven sub-groups as discrete, no attempt was made at the sample selection stage to maintain proportionality against the total universe.

1. Combined Totals

In reporting results, no combined totals have been shown unless it serves a particular analytical purpose. In no case are totals shown to reflect the entire universe. Since practitioners account for 86 per cent of the study population,

students 12 per cent, educators 4 per cent, no useful purpose could be seen for showing composite results based on quantitative weighting.

Within these three primary groups, the following procedures have been adopted.

Educators:

Results from Law professors and Bar Admission instructors have not been combined because their returns reflect quite divergent views in several respects.

Students:

In those cases where composite student results are shown, no weighting was enforced, since their respective populations are virtually identical.

Practitioners:

Where these are reported in combined fashion, results have been weighted as follows:

<u>Sub-group by year</u>	<u>% Practitioner population</u>	<u>Sample return</u>	<u>Weight factor</u>	<u>Weighted sample</u>
1967-69	15.8%	193	1.11	215 (15.8%)
1957-66	28.7	224	1.75	391 (28.7%)
pre-1957	<u>55.5</u>	<u>223</u>	<u>3.39</u>	<u>757</u> (55.5%)
	100.0	640	6.25	1363

2. Non-respondents

A second issue concerning representativeness is the extent to which sample returns reflect the total universe, including those who do not reply to the questionnaire. Although the fact that

the initial sample frame was imperfect has bearing on this question, the principal factor is the level of response among those who were contacted.

Past experience with the use of the mails for data collection shows significant variation in response rates--timing, subject, and survey sponsorship being important variables. Excluding continuing panels, response levels in excess of 40 per cent on initial frame tend to be rare in the case of commercial research. The most relevant Government experience with mail response is the recent student population survey,¹ in which response rate in the order of 60 per cent was anticipated.

Reference to experience in other survey work does not answer the question as to whether the 41 per cent who responded to this survey reflect the 59 per cent who did not. Obviously respondents are more likely to be interested in the subject, and therefore to hold more definite views than may be true for non-respondents. This is indicated by the substantially higher response levels among those whose experience with the legal education process is more recent (reference table M-2).

¹Post-Secondary Student Population Survey, 1968-69, DBS catalogue No. 81-543. p. 142.

Verification procedures used in evaluating representativeness are of three types:

- i) Special investigations of non-residents through other than mail contact--involving significant additional expense.
- ii) Comparison between survey and independent data, pre-supposing that external data is both available and relevant to the purposes of the survey.
- iii) Allowance for non-response in estimates of variance--adjustments which require special procedures in both sampling and statistical treatment.

None of these procedures is feasible within the scope of this study. The assumption made is that the nature of information from non-respondents would not be sufficiently different from that reported to change the general direction of conclusions. There is no factual evidence by which to accept or refute this assumption.

g) Significance

Estimates of sample variance are provided in Table M2 as a guide in comparing percentage differences across sub-groups in the summary tables.

Use of the term "significant" in the body of the report means that the particular statistics are in fact different, based on the same criteria as used in Table M2. Where reference is made to statistics which are not significant in this sense, the term directional or non-significant is employed.

In the summary tables, sample bases are shown in all cases. Particular attention is drawn to sub-bases of 50 or less, which occur in some cases of cross-tabulation. Inferences drawn from these small samples should be treated with particular caution.

Untabulated Data

The fact that a survey was being conducted was seen as an opportunity to collect as much data on legal education and the legal profession as possible. Although it was understood that the Commission could not finance the tabulation of information not directly connected with the object of this study, with the Commission's consent, some extra questions were included. The tabulation of these questions can be undertaken by other interested parties (e.g., The Law Society), as the Commission's policy is to make available the computer cards and questionnaires to such groups.

Specific examples include the ability to cross-break all possible combinations of the following variables, for practitioners:

1. Position in law firm/solo practice/other than law firm employee.
2. Size of firm.
3. Specialty practiced (5 categories)/general practitioner.
4. Age.
5. Sex.
6. Income (6 Brackets).

Table M-1

Estimated Universes, Number and Proportionate Mail-out and Returns

	Estimated Universe	#	Mail-out % of Universe	#	Usable Returned % of Mail-out	% of Universe
<u>Educators</u>						
Law Professors	120	111	92%	50	45%	42%
Bar Admission Instructors	190	97	51	40	41	21
<u>Students</u>						
Articling Students	475	475	100	232	49	49
Bar Admission Students	450	260	58	152	59	34
<u>Practitioners</u>						
Recent Graduates - 1967-69	1000	446	45	193	43	19
Practitioners - 1957-66	1810	600	33	224	37	12
Practitioners - Pre-1957	3500	752	21	223	30	6
<u>Totals</u>						
Educators	310	208	67	90	43	29
Students	925	735	79	384	52	41
Practitioners	6310	1798	28	640	36	10
Grand Total	7545	2741	36	1114	41	15

Table M-2

General Guideline for Estimating the Significance of a
Sample Statistic from the Population

For the sub- groups below (rounded sample sizes in brackets)	The range of error (+ or -) is as indicated for each of 5 percentage levels				
	<u>10/90</u>	<u>20/80</u>	<u>30/70</u>	<u>40/60</u>	<u>50</u>
Practitioners in total (650)	2.0	2.5	3.0	3.0	3.0
Any practitioner sub-group (200)	3.0	4.0	5.0	5.0	5.0
Students in total (400)	1.5	2.0	2.5	2.5	2.5
Articling students (200)	2.0	2.5	3.0	3.0	3.0
Bar Admission students (150)	3.0	4.0	4.0	4.0	4.5
Law Professors (50)	4.5	5.5	7.5	8.0	8.0
Bar Admission Instructors (40)	6.5	8.0	10.0	11.0	11.0
Any cross tabula- tion of:					
30-50 students	5.5-4.0	7.5-6.0	9.0-6.5	9.0-7.0	9.0-7.0
pract.	8.0-6.5	11.0-8.5	13.0-9.5	13.5-11.0	13.5-11.0
over 50-100					
students	4.0-3.0	6.0-4.0	6.5-4.5	7.0-5.0	7.0-5.0
pract.	6.5-4.5	8.5-6.0	9.5-7.0	11.0-7.0	11.0-7.0
100-200					
students	3.0-2.0	4.0-3.0	4.5-3.0	5.0-3.5	5.0-3.5
pract.	4.5-3.0	6.0-4.0	7.0-5.0	7.0-5.0	7.5-5.0

Based on 90% confidence level, using the standard error formula

$$dp = \sqrt{\frac{PQ}{N} (1 - \frac{N}{P})}.$$

Estimates of error range are rounded to the nearest 1/2 percentage point.

This formula includes a correction factor to take into account that the sub-groups samples, to varying degrees, constitute relatively high proportions of the corresponding populations (reference table M-1).

The Economics of Post-LL.B. Legal EducationCost-Benefit Analysis: Calculation of
Net Present Value (Undiscounted) to Age 35

Formula: Net Present Value (Undiscounted)
 = Total Benefits minus Total Costs
 (over working lifetime or defined
 period.)

1. From Benefit Estimates of 1957-66 PractitionersCurrent System (LLB+Art+BAC)
over Alt. "A" (Immed. exam)

	<u>Social</u>	<u>Private</u>
Benefits	\$-15,722	\$-11,790
Costs	- 9,174	- 6,579
Net Present Value (to Age 33 only)	\$-24,896	\$-18,369

Alt. "B" (1-yr. Combined Art/BAC)
over Alt. "A"

Benefits	\$- 7,082	\$- 5,310
Costs	- 4,686	- 3,543
Net Present Value (to Age 33 only)	\$-11,768	\$- 8,853

2. From Benefit Estimates of Pre-1957 PractitionersCurrent System over Alternative "A"

	<u>Social</u>	<u>Private</u>
Benefits	\$-10,881	\$- 8,161
Costs	- 8,277	- 5,779
Net Present Value (to Age 33 only)	\$-19,158	\$-13,940

Alternative "B" over Alternative "A"

Benefits	\$- 5,028	\$- 3,771
Costs	- 4,162	- 3,219
Net Present Value (to Age 33 only)	\$- 9,180	\$- 6,990

Notes: 1) Net Present Value calculations have been made only for the first seven years of practice, to age 33. Benefit (salary) data was not available beyond that point, and there would have been no basis for projecting this short time-span to age 65. Thus we can only conjecture as to the

Net Present Value if the further 32 years of practice were included in the figures. It is clear that unless the students who studied longer (Current System and Alt. "B") began to catch up, and overtook, very rapidly the student who started practice immediately after his LL.B. (Alt. "A") the benefits to the longer-schooled lawyers would never equalize. As the chart in Figure E-1 shows, for the first seven years there is no trend suggesting that the later graduates' income even converges with that of the immediate bar entrant (in fact the data suggests the opposite). Also, if benefits were discounted, the discounting effect is greater the higher the age.

2) The effect of discounting would be to reduce the negative net present values, in the direction of positive figures. Just as a dollar earned seven years from now is valued less than a dollar earned today (by the amount of the actual or imputed interest), a dollar lost seven years from now is valued less than a dollar lost today.

BenefitsTable E-2

Calculation of Salary Benefits per Student
of Post-LL.B. Legal Education in Ontario
1969-70 (Source: Questionnaire)

A. As Estimated by 1957-1966 Practitioners1. Social

<u>Age</u>	<u>Salary</u>			<u>Salary</u>	
	<u>Current System</u>	<u>Alternative "A" (Immediate Exam.)</u>	<u>Difference vs Alt. "A"</u>	<u>Alternative "B" (1 Year Comb.)</u>	<u>Difference vs Alt. "A"</u>
26	0	\$ 7,337	(1)	0	(1)
27	0	8,937	(1)	\$ 8,326	\$- 611
28	\$ 8,680	10,538	\$-1,857	9,924*	- 614
29	10,247*	12,586*	-2,339	11,523	-1,063
30	11,803	14,634*	-2,831	13,494*	-1,140
31	13,785*	16,683	-2,898	15,465*	-1,218
32	15,767*		-2,898	17,435	-1,218
33 (2)	17,750		-2,898		-1,218

Total Difference (Benefits) \$-15,722

\$-7,082

* Calculated by linear interpolation

(1) No difference is added in these columns because this difference is taken into account in the form of net foregone earnings on the costs side; to include it again as a negative benefit would be double counting.

(2) Average ages were used, but this could also have been shown as years 1-7 after LL.B.

2. Private

Assume income tax of 25% paid on the difference, then Total Private Benefits would be:

Current system vs. Alt. "A" : \$-11,790
Alternative "B" vs. Alt. "A" : \$- 5,310

Table E-2
(Cont'd.)B. As Estimated by Pre-1957 Practitioners1. Social

Age (1)	<u>Salary</u>			<u>Salary</u>	
	Current System	Alternative "A" (Immediate Exam.)	Difference vs Alt. "A"	Alternative "B" (1 Year Comb.)	Difference vs Alt. "A"
26	0	\$ 6,813	(1)	0	(1)
27	0	8,192*	(1)	\$ 7,874	\$- 318
28	\$ 8,349	9,571	\$- 1,222	9,183	- 388
29	9,681*	11,255*	- 1,574	10,492	- 763
30	11,013	12,939*	- 1,926	12,104	- 835
31	12,571*	14,624	- 2,053	13,716	- 908
32	14,129*		- 2,053	15,328	- 908
33 (2)	15,688		- 2,053		- 908
Total Difference (Benefits) \$-10,881					\$-5,028

* (Same as above)

(1) (Same as above)

(2) (Same as above)

2. Private

Assume income tax of 25% paid on the difference, then Total Private Benefits would be:

Current system vs. Alt. "A" : \$-8,161

Alternative "B" vs. Alt. "A" : \$-3,771

Note: The following assumptions are behind these benefit calculations:

1. Unemployment = 0%
2. Labour force participation = 100% to age 33.
3. Mortality = 0% between age 26 and age 33.
4. Income tax for private case = 25% on increment.

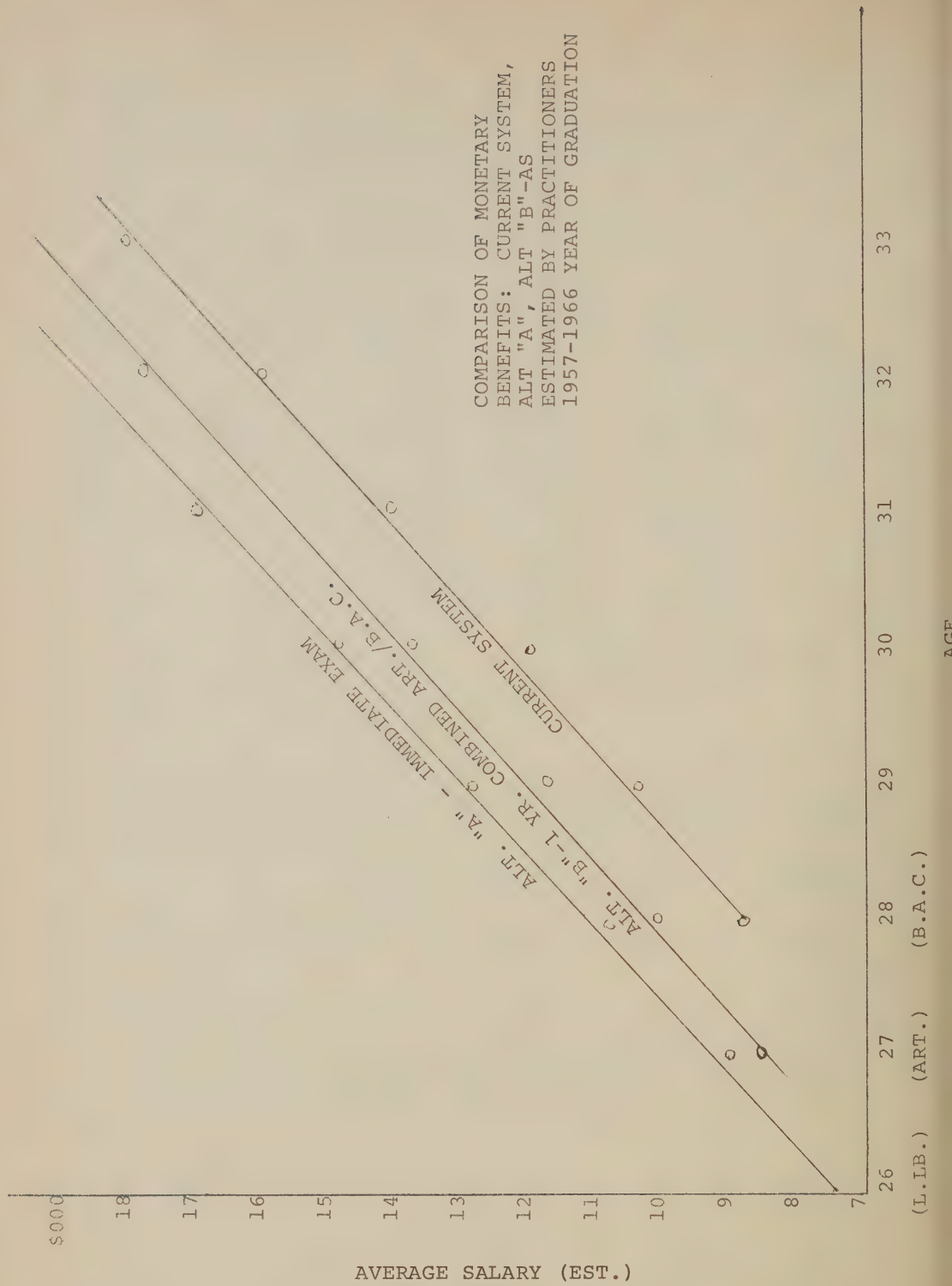


Table E-3Estimated Rates of Salary Growth in the First
Five Years of Practice - Three AlternativesUsing Estimates of 1957-1966 Practitioners

<u>Salary</u>	<u>Current</u>	<u>Alt. A.</u>	<u>Alt. B.</u>
Starting (Index)	\$ 8,680 (100)	\$ 7,337 (100)	\$ 8,326 (100)
After 2 years (Index to starting)	11,803 (136)	10,538 (144)	11,523 (139)
After 5 years (Index to starting) (Index to 2 years)	17,750 (205) (151)	16,683 (228) (158)	17,435 (210) (152)

Using Estimates of Pre-1957 Practitioners

<u>Salary</u>	<u>Current</u>	<u>Alt. A.</u>	<u>Alt. B.</u>
Starting (Index)	\$ 8,349 (100)	\$ 6,813 (100)	\$ 7,874 (100)
After 2 years (Index to starting)	11,013 (132)	9,571 (141)	10,492 (133)
After 5 years (Index to starting) (Index to 2 years)	15,688 (188) (142)	14,624 (215) (152)	15,328 (193) (146)

These figures show that the rate of increase is slowest for the graduate of the current system. As both of the other graduates would be earning more by the time the graduate of the current system starts, he would never catch up. Similarly the figures show that the Alt. B. student would never catch up to the Alt. A. student.

Table E-4

Costs

Calculation of Costs per Student of Post-LL.B.
Legal Education in Ontario, 1969-70

Using Estimates of 1957-66 Practitioners (Estimates
of Pre-1957 Practitioners in Brackets)

No.	Item	Social (Total) Costs (\$)			Private Costs (\$)		
		Current System		Alt. "B"	Current System		Alt. "B"
		Art	BAC		Art	BAC	
1.	Operating Expenditures	0	810	930	0	0	0
2.	Imputed Rent	0	505	50	0	0	0
3.	Net Foregone Earnings	2,515 (1,991)	3,805 (3,432)	2,890 (2,366)	2,137 (1,791)	2,936 (2,482)	2,437 (2,113)
4.	Student Grants	0	350	0	0	0	0
5.	Interest on Student Loans	0	23	0	0	50	0
6.	Books & Supplies	50	50	50	50	50	50
7.	Incremental Rm. & Bd.	400	300	400	400	300	400
8.	Tuition Fees	0	0	0	0	290	290
9.	Other Fees	0	316	316	0	316	316
10.	Incremental Transportation	25	25	50	25	25	50
Total		\$2,990	\$6,184	\$4,686	\$2,612	\$3,967	\$3,543
		\$9,174			\$6,579		
		(\$2,466) (\$5,811)		(\$4,162)	(\$2,266) (\$3,513)		(\$3,219)
		(\$8,277)			(\$5,779)		

Table E-4
(Cont'd.)Notes

1. Operating Expenditures: Taken from 1970/71 Bar Ad Course submission to D.U.A. (Finance Branch analysis dated 12/12/69). Alt. "B" necessitates decentralization of the B.A.C. because the students would have to be taking the course near where they article; a 15 per cent increase in operating expenditures is assumed to result from setting up at least four additional course centres at the four law schools located outside Toronto.

2. Imputed Rent: The Law Society Financial statements for 1969 show an allocation of \$60,000 for rent for the 57,600 square feet used by the BAC in Osgoode Hall (on Queen Street). A conservative estimate of the actual rental value of the equivalent space in this area of Toronto is \$230,400, or \$505 per student in 1969. The calculations were as follows:

Assume Capital cost of space is \$20/sq.ft. (new is \$42-\$54)	
Assume capital cost of furniture is \$5/sq.ft. (new is \$5-\$15)	
Assume depreciation on building at 2 per cent p.a.	= \$0.40
Assume depreciation on furniture at 15 per cent p.a.	= <u>0.75</u>
	1.15
Plus imputed interest at 8 per cent	= <u>2.80</u>
	\$3.95
	(\$4)
$\$4/\text{sq.ft.} \times 57,600 \text{ sq.ft.} = 230,400 \div 459 \text{ students}$	
$= \$505/\text{student}$	

Table E-4
(Cont'd.)

The \$50 estimated for Alt. "B" assumes the use of considerably less expensive space, and includes only the estimated incremental cost of that space (as the law school buildings are already being used in the daytime); also, that the costly space in Osgoode Hall would be given up, and the Toronto course run in one or both of the city's law schools.

3. Net Foregone Earnings: The higher figures are derived from the estimates of 1957-66 Practitioners, lower (bracketed) figures, of the pre-1957 Practitioner group. Detailed working papers available on request from the author.

4. Student Grants: The 1969-70 Annual Report of the Department of University Affairs shows that 223 students received grants in 1969-70, with an average grant of \$717. As 459 students graduated from the BAC this year, the average per student in the course is approximately \$350.

5. Interest on Student Loans: The 1969-70 D.U.A. Annual report shows \$128,255 loaned to BAC students that year, and interest is assumed at 8 per cent.

6. Books & Supplies: Estimated at \$50. Although no special books or materials are required in either articling or the BAC, many students purchase texts or law reports voluntarily. Stationery and similar small miscellaneous items would be included.

Table E-4
(Cont'd.)

7. Incremental Room and Board: The incremental cost of room and board for a student moving to another city was estimated at \$100/month. The survey results showed about half the students articling for 12 months, half for 15; approximately 30 per cent moved to article, 50 per cent to take the BAC. Thus $\$100/\text{mo.} \times 13.5 \text{ months} \times 30 \text{ per cent} = \$400/\text{student}$; and $\$100/\text{month} \times 6 \text{ months} \times 50 \text{ per cent} = \$300/\text{student}$.

8. Tuition Fees: From BAC Calendar. The \$290 has been raised to \$350 for 1970-71.

9. Other Fees: These are the \$101 paid at the commencement of articling and the \$215 paid at the completion of the BAC. While there may be some argument as to whether these are tuition fees or professional dues, they are undoubtedly a student cost and must be included in the total.

10. Incremental Transportation: Estimated at \$25 for the year in articling, and the same for the 6 mon. BAC, as about twice as many students moved to take the latter as the former. Alt. "B" would necessitate all students taking an evening BAC class at least once a week in each of 5 or 6 law schools near where they articulated, resulting in somewhat heavier commuting expense.

Summary

Clearly the most important single item of cost is foregone earnings, representing almost 69 per cent of the social cost,

and over 73 per cent of the private cost under the current system. Thus while books and supplies or incremental room and board are somewhat crude estimates, their variation by 50 per cent either way would have no significant effect on the totals, or on the conclusions to be drawn from them.

Throughout the Cost Calculations, where figures used were not derived from government sources or practitioners' estimates, in all cases the most conservative assumption was used (e.g. in the calculation of imputed rent, the capital cost of space was assumed to be \$20 per square foot in the Osgoode Hall area of Toronto, whereas the capital cost of space in new university buildings in Ontario is about \$42-54 per square foot).

Table E-5

Articling and Bar Ad Course
Students' Sources of Financing

	<u>Articling (12-15 mos.)</u>			<u>Taking Bar Ad. (6 mos.)</u>		
	<u>Total</u>	<u>No.of</u> <u>Resp.</u>	<u>Aver-</u> <u>age \$</u> ⁽¹⁾	<u>Total</u>	<u>No.of</u> <u>Resp.</u>	<u>Aver-</u> <u>age \$</u> ⁽¹⁾
<u>Gifts</u>	\$ 38,100	39	\$ 977	\$ 37,735	45	\$ 839
<u>Spouse's</u> <u>income</u>	271,161	59	4,596	159,706	55	2,904
<u>Articling</u> <u>salary</u>	707,062	159	4,447	92,276	42	2,316
<u>Other emp.</u> <u>income</u>	59,430	22	2,701	34,740	16	2,171
<u>Savings</u>	16,600	13	1,277	21,600	21	1,029
<u>Loans</u>	53,425	27	1,979	96,400	84	1,148
<u>Grants</u>	1,100	3	367	28,225	40	706 (2)
<u>Other</u>	18,382	6	3,064	13,590	8	1,941

(Based on completed Bar Admission questionnaires plus
Recent Graduate questionnaires to make up total of 200)

(1) Per respondent, rather than per student enrolled.

(2) Average of \$717 shown in D.U.A. Report for 1969-70

O.S.A.P. grants suggests reasonable accuracy in the
students' estimates.

Table E-6

Government Contributions to Private
Costs of the Bar Ad Course

Costs of the Bar and Course							Total
		Loans			Grants		\$
Academic Year	No. of Loans	Total Value \$	Avg/ Loan	No. of Grants	Total Value \$	Avg/ Grant	
1964-65 (CSLP)	158	144,371	920	-	-	-	144,371
1965-66 (CSLP)	100	84,579	846	-	-	-	84,579
1966-67 (Mar. 31) (OSAP)	131	30,955	236	18	3,935	218	34,890
1967-68 (OSAP)	184	104,960	571	178	117,698	661	122,658
1968-69 (OSAP)	208	117,805	566	206	135,205	656	253,010
1969-70 (OSAP)	230	128,255	558	223	160,000	717	288,255

Source: D.U.A. Annual Reports. During 1966-67 the Ontario Student Awards Program replaced the Canada Student Loan Plan.

Social Costs: These student loans/grants are in addition to Ontario contributions to the BAC in the form of operating grants, of: 1968/69 - \$125,000 (via York University for use of a portion of Osgoode Hall for their Faculty of Law); 1969/70 - \$200,000 (as an operating grant entirely for the BAC, since the York University Faculty of Law moved into its own building in Fall 1969); 1970/71 - \$325,000 (incl. \$250,000 operating grant and \$75,000 as the first of five grants for the capital costs of building renovations). All figures from D.U.A.

Appendix IIIThe Sociology of Legal Education--
Demographics and AttitudesCodes

E - Educators (Professors and Bar Ad. Instructors)
 L.P. - Law Professors
 I - Bar Ad. Instructors
 P - Practitioners (1 or more sub-groups)
 S - Students
 A.S. - Articling Students
 BAS - Bar Ad. Students

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Table S-1Educators: Year of Graduation from Law School

	<u>Law Professors</u> (last school attended)	<u>Bar Ad.</u> <u>Instructors</u>
Base # (100%)	50	40
1970	2%	0%
1965-69	44	20
1960-64	22	45
1955-59	14	18
1950-54	4	15
1940-49	8	0
Pre 1940	4	2
Not stated	<u>2</u>	<u>0</u>
Total pre 1958	22	30
Total 1958 & after	76	70

Question: "In what year did you graduate from law school
(the last law school)?"

Table S-2Educators: Length of Time Teaching
and Number Subjects Taught

	<u>Law Professors</u>	<u>Bar Ad. Instructors</u>
Base # (100%)	50	40
<u>Length of Time Teaching</u>		
5 years or less	58%	76%
6-10 years	20	20
over 10 years	22	1
not stated	0	3
- Law Professors (specifically in Ontario)		
5 years or less	66%	
6-10 years	18	
over 10 years	16	
<u>Number of Subjects Taught</u>		
one	8%	97%
two	22	0
three	38	0
four	30	0
five	2	0
not stated	0	3

Question: "What subject or subjects are you currently
teaching (in the Bar Admission course)?"

"How long have you been teaching (in the Bar
Admission course)?"

Table S-3

Educators: Location of Law School
Last Attended as Student

	<u>Law Professors</u>	<u>Bar Ad. Instructors</u>
Base # (100%)	50	40
In Ontario	16%	88%
In another Canadian province	4	5
In the United States	54	0
Outside Canada/U.S.	26	7
Not stated	0	0

Question: "Where is the Law School you last attended
 (as a student)?"

Table S-4Educators: Background of Law Professors

	<u>Law Professors</u>
Base # (100%)	50
<u>School Association</u>	
Queens	28%
Toronto	24
Western Ontario	16
Windsor	14
Ottawa	10
Osgoode/York	8
Not stated	0
<u>Incidence of Currently Practicing Law</u>	
Do practice	8%
Do not practice	90
Not stated	2
<u>Incidence of Ever Practicing Law</u>	
Currently	8%
Previously	34
Total have practiced - 42%	
Have not practiced	52
Not stated	6
<u>Incidence of:</u>	
a) Articling	54%
In Ontario - 30%	
Did not Article	42
Not stated	4
b) Bar Membership	74%
In Ontario - 54%	
Not Bar Member	24
Not stated	2
c) Taking Bar Ad. Course	24%
In Ontario - 14%	
Did not take course	74
Not stated	2

Table S-4
(Cont'd.)

Law Professors

Age

under 30	28%
30-39	48
40 & over	22
Not stated	2

Sex

Male	92%
Female	6
Not stated	2

Question: "Do you presently carry on an outside legal practice?"

"Please indicate whether you: Articled; are a member of any Bar; took a Bar Admission Course."

Educators: Background on Bar Ad. InstructorsBar Ad. Instructors

Base # (100%)	40
<u># Lawyers in Firm Associated With</u>	
1	10%
2-4	12
5-15	20
16-30	38
over 30	20
Not stated	0
<u>Estimated % Annual Working Time</u>	
<u>Devoted to Teaching Bar Ad.</u>	
under 5%	78%
5-10%	12
10-20%	0
over 20%	2
Not stated	8
<u>Estimated Length of Time Since Revising</u>	
<u>Course - to extent of 25% or more</u>	
Last year/within past year	28%
Within two years	10
Within three years	5
Within six years	2
Never	5
Just started to instruct	5
Not stated - answer not relevant	45
<u>Age</u>	
under 30	7%
30-39	65
40 & over	28
Not stated	0
<u>Sex</u>	
Male	90%
Female	10
Not stated	0

Question: "Check the approximate number of lawyers connected with the law firm with which you are associated."

"What percentage of your working time do you spend teaching the Bar Admission Course?"

"About how long ago did you find it necessary to substantially revise any one or more of your courses in the Bar Admission--say to the extent of 25% or more?"

Educators: Volunteered Areas in Greatest Need of
Improvement for Ontario Legal Education as a Whole

	<u>Professors</u>	<u>Bar Ad. Instructors</u>
Base # (100%)*	<u>50</u>	<u>40</u>
Reference to shortening, combining	46%	32%
Post LLB education	<u>42</u>	<u>32</u>
Pre LLB education	4	0
Opportunity for graduate study-- specialization certification	16	15
Higher standards: teaching methods, teachers, entrance requirements	14	7
More stress on human relations	8	5
Reference to Articling/Bar Ad.		
Improve usefulness of Articling	4	0
Higher Articling salaries	2	0
Make Bar Ad. less routine, rote	4	5
Decentralize Bar Ad.	6	0
Integration of Articling/Bar Ad/LLB	6	0
Better student-teacher ratio	4	0
Reference to Practicality	<u>4</u>	<u>40</u>
General	4	19
LLB	0	12
Articling	0	7
Bar Ad.	0	2
Other individual misc. mentions	14	12
Present system adequate	2	5
Not stated	6	10

*Total mentions add to more than 100%--multiple response

Question: "Looking at the legal education system in Ontario as a whole, what if anything would you consider to be the most necessary improvements?"

Educators: Preference as to Three Alternative
Approaches for Admittance to Practice

	<u>Law Professors</u>	<u>Bar Ad. Instructors</u>
Base #	50	40
<u>Current Requirement</u> <u>(LLB + Articling + Bar Ad.)</u>	6%	48%
<u>Alternative A</u> <u>LLB + immediate Bar exam</u> <u>(No Articling or Bar Ad.)</u>	24	2
<u>Alternative B</u> <u>LLB + 1 year combined Articling</u> <u>and Bar Admission</u> <u>(as option to current)</u>	62	35
Not stated	8	15

Question: "If you had just obtained your LLB, under which of these three alternative methods would you prefer to be admitted to practice?"

Rank in order of preference
i.e., 1, 2, 3

- i) Current education requirement (LLB + ()
12 months Articling + 6 months Bar Ad.)
- ii) Alternative (a) LLB + immediate Bar
Examination. A graduate LLB could, at his
option, take a Bar Exam immediately. A
satisfactory grade in the exam would mean
admission to the Bar, without Articling
or Bar Admission course ()
- iii) Alternative (b) LLB + one year combined
Articling and Bar Admission course. Again
as an alternative to the present requirement,
the graduate LLB could elect to take a one-
year combined Articling and Bar Admission
course, as compared to the present 18 to 21
months total ()

Educators: Preference as to Mandatory vs.
Optional Subjects in Bar Ad. Course

	<u>Law Professors</u>	<u>Bar Ad. Instructors</u>
Base # (100%)	50	40
Course should be:		
All mandatory	32%	58%
All optional	10	2
Combination of both	36	38
Not stated	22	2

Question: "Do you believe the choice of subjects studied in the Bar Admission course should be all mandatory subjects; a combination of mandatory and optional; all optional subjects?"

Table S-9

Educators: Opinions as to Emphasis
in Bar Ad. Curriculum

P: Law Professors - Base # (100%) - 50

I: Bar Ad. Instructors - Base # (100%) - 40

<u>Subject</u>	<u>Opinion: Should be--</u>							
	<u>More</u>		<u>Less</u>		<u>No</u>		<u>Not</u>	
	<u>Emphasis</u>		<u>Emphasis</u>		<u>Change</u>		<u>Stated*</u>	
	<u>P</u>	<u>I</u>	<u>P</u>	<u>I</u>	<u>P</u>	<u>I</u>	<u>P</u>	<u>I</u>
Real Estate	4%	7%	34%	10%	30%	68%	32%	15%
Civil Procedure	2	0	28	30	34	53	36	17
Creditor's Rights/Bankruptcy	0	17	24	7	40	53	36	23
Corp. & Commercial Law	8	23	24	7	30	50	38	20
Legal Aid	46	30	4	2	14	55	36	13
Professional Conduct	26	20	14	15	22	52	38	13
Surrogate Court Practice	2	15	14	5	46	63	38	17
Estate Planning	2	2	40	30	20	50	38	18
Domestic Relations	24	35	8	0	32	48	36	17
Criminal Procedure	14	12	10	7	40	63	36	18
Landlord & Tenant	8	7	12	5	44	71	36	17
Average - 11 subjects	12	15	19	11	32	57	36	17

*Not qualified to answer or opposed to whole structure

Example of question format:

<u>Subject</u>	<u>Current Am't</u> <u>of Time</u>	<u>Opinion regarding emphasis</u> (check one box for each subject)		
		<u>should be</u> <u>more</u>	<u>allright</u> <u>as it is</u>	<u>should be</u> <u>less</u>
Real Estate	3 weeks	()	()	()

Table S-10

Practitioners: Year of Starting Practice

Group:	Total Pract. Weighted	<u>67-69</u>	<u>57-66</u>	<u>pre 1957</u>
Base # (100%)	1363	193	224	223
1969	10%	60%	--	
1968	3	17	--	
1967	4	23	--	
1966	4		11%	
1965	3		11	
1964	4		16	
1963	4		14	
1962	3		10	
1961	1		4	
1960	2		8	
1959	2		8	
1958	2		7	
1957	*		1	
1956	1			2%
1955	4			8
1954	4			7
1953	4			7
1952	2			4
1951	4			8
1950	4			6
1949	3			5
pre 1949	28			51
Not stated	4	0	10	2

*Less than 1%

Question: "In what year did you start to practice law?"

Table S-11

Practitioners: Size of Law Firm
With Whom Currently Associated

	Total Pract. Weighted	<u>67-69</u>	<u>57-66</u>	<u>pre 1957</u>
Base # (100%)	1363	193	224	223
<u># on staff</u>				
1	12%	19%	21%	6%
2-4	32	35	36	27
5-15	21	27	19	21
16-30	4	5	4	4
over 30	3	4	2	4
Not with law firm	16	8	16	15
Not stated	12	2	2	14

Question: "If you are a partner or employed in a law firm; how many lawyers (i.e., excluding students) are on the staff of the law firm with whom you are now associated?"

Table S-12

Incidence of Attending
Various Law Schools

	<u>Articling Students</u>	<u>Bar Ad. Students</u>	<u>67-69</u>	<u>57-66</u>	<u>pre 1957</u>
Base # (100%)	232	152	193	224	223
Osgoode/York	34%	36%	44%	58%	87%
Toronto	27	22	21	16	7
Western	9	16	13	5	0
Queens	12	12	9	4	*
Ottawa	9	5	9	9	0
Outside Ontario	9	9	4	8	6
Not stated	0	0	0	0	0

*Less than 1%

Question: "From which law school did you graduate?"

Table S-13Respondent Profile: Age and Sex

	<u>Articling Students</u>	<u>Bar Ad. Students</u>	<u>Practitioners</u>		
			<u>67-69</u>	<u>57-66</u>	<u>pre 1957</u>
Base # (100%)	232	152	193	224	223
<u>Age</u>					
Under 25	10%	3%	0	0	0
25-26	51	38	9%	0	0
27-29	32	49	58	2%	0
30-34	4	8	28	48	0
35-39	1	1	4	39	4%
40-49	2	1	1	10	47
50+	0	0	0	0	48
Not stated	0	0	0	1	1
<u>Sex</u>					
Male	88	88	95	95	91
Female	6	5	2	2	3
Not stated	6	7	3	3	6

Question: "Please check your present age."
 "What is your sex?"

Table S-14

Anticipated or Actual Position Taken
Following Admission to Practice

	<u>Articling Students</u>	<u>Bar Ad. Students</u>	<u>Practitioners</u>		
			<u>67-69</u>	<u>57-66</u>	<u>pre 1957</u>
Base # (100%)	232	152	193	224	223
<u>Anticipated</u>					
Partner in law firm	17%	12%	--	--	--
Employee in law firm	61	76	--	--	--
Own (1 man) practice	8	7	--	--	--
Other than law firm	12	4	--	--	--
Not stated	2	1	--	--	--
<u>Immediately After Admittance</u>					
Partner in law firm	--	--	12%	9%	21%
Employee in law firm	--	--	69	68	54
Own (1 man) practice	--	--	10	11	17
Other than law firm	--	--	9	11	7
Not stated	--	--	0	1	1
<u>At present Time</u>					
Partner in law firm	--	--	26	55	51
Employee in law firm	--	--	46	7	1
Own (1 man) practice	--	--	18	22	22
Other than law firm	--	--	8	16	15
Not stated	--	--	2	*	11

*Less than 1%

Question: "Which of the following did you do immediately following your start of practice; which are you now doing?" (Which do you anticipate doing?)

Table S-15

Extent and Nature of Specialization Anticipated or Practiced

	Articling Students	Bar Ad Students	Practitioners		
			67-69	57-66	pre 195
Base # (100%)	232	152	193	224	223
No specialization	20%	14%	34%	29%	34%
Undecided	23	24	--	--	--
Litigation	16	25	22	18	12
Commercial & Real Estate	7	18	17	23	18
Corporation Law and Taxation	13	11	8	7	9
Personal Taxation, Estates, Trusts, Wills	1	4	1	*	5
Criminal Law	4	1	5	2	4
Other	6	3	5	5	8
Not stated (not practicing in law firm)	10	0	8	16	10
<u>% Without Specializa- tion or undecided</u>					
<u>Totals - weighted</u>					
<u>Students</u>	<u>Pract.</u>				
41%	33%	46	38	34	29
					34

*Less than 1%

**Includes 5% who indicated no specialization, but who are not practicing with law firm.

Question:

"If you are now practicing law, are you: Specializing to the extent of 50% or more of your time in any one of the following; or a general practitioner?"
(If you intend to practice law do you intend.....?)

Volunteered Areas in Greatest Need of Improvement for
Ontario Legal Education as a Whole

Base # (100%)*	Articling Students	Bar Ad. Students	Practitioners		
	232	152	67-69	57-66	pre 1957
Reference to duration:					
Total (shorten)	64%	50%	52%	20%	9%
Shorten Articling	26	19	28	7	1
Shorten total system	10	13	5	5	5
Shorten law school	6	7	8	2	1
Shorten post law school period	15	6	5	4	1
Shorten Bar Ad.	7	5	6	2	1
Greater emphasis on practical matters (less abstract)	35	43	34	31	21
More/better special- ization	3	11	9	9	13
Reference to higher standards	11	11	8	7	2
Improve/lengthen Bar Ad. Course	1	5	8	3	0
Reduction in number of students	3	4	3	3	3
References to specific changes in subjects	4	4	6	9	8
Refresher courses	1	1	2	1	2
Other individual misc. mentions	13	15	14	10	7
Present system adequate	1	1	1	5	6
Not stated	6	7	6	20	42

*Total mentions add to more than 100%--multiple response.

Question: "Looking at the legal education system in Ont. as a whole, what would you consider to be the most necessary improvements?"

Table S-17Estimated Contribution of 4 Phases of Legal Education/
Experience to Professional Development

Maximum # points assigned - 10

	<u>Mean Average</u>	<u>1-3 points</u>	<u>4-6 points</u>	<u>7-10 points</u>	<u>Not stated</u>
		%	%	%	%
<u>Bar Ad. Students</u> <u>(Base #152--100%)*</u>					
Law School training	3.39	58	36	5	1
Articling period	3.38	51	45	2	2
Bar Ad. Course	3.20	56	38	5	1
	<u>9.97</u>				
<u>Practitioners--67-69</u> <u>(Base #193--100%)</u>					
Law School Training	2.27	77	17	3	3
Articling period	1.87	85	7	5	3
Bar Ad. Course	1.86	86	3	8	3
First 2 yrs. of practice	3.99	32	59	6	3
	<u>9.99</u>				
<u>Practitioners--57-66</u> <u>(Base #224--100%)</u>					
Law School Training	2.65	50	17	2	31
Articling period	1.97	62	4	3	31
Bar Ad. Course	1.80	55	4	10	31
First 2 yrs. of practice	3.62	31	36	2	31
	<u>10.04</u>				

* Point assignment for first 2 years of practice not asked.

Question: "Consider for a moment your total professional development to date. If we may assign 10 points to represent that total development, how many would you assign to the contribution made by each of the following...?"

Table S-18Preference as to Three Alternative Approaches for Admittance to Practice

	<u>Art. Students</u>	<u>Bar Ad. Students</u>	<u>Practitioners</u>		
			<u>67-69</u>	<u>57-66</u>	<u>pre 57</u>
Base # (100%)	232	152	193	224	223
<u>Current Present Requirement (LL.B + Articling + Bar Admission)</u>	11%	13%	25%	35%	51%
<u>Alternative A LL.B + immediate Bar exam (No Articling or Bar Admission) (as alternative to current)</u>	12	7	4	7	4
<u>Alternative B LL.B + 1 year combined Articling and Bar Admission (as alternative to current)</u>	72	61	56	48	12
Not stated	5	19	15	10	33

Question: "If you had just obtained your LL.B, under which of these three alternative methods would you prefer to be admitted to practice: current educational requirement; alternative a--LL.B + immediate Bar exam; alternative b--LL.B + one year combined Articling and Bar Ad.course? (rank in order of preference)"

Table S-19

Overall Rating as Educational Experience: Articling Period
& Bar Ad Course

	<u>Totals</u>		<u>Articling</u>	<u>Bar Ad,</u>	<u>Practitioner</u>
	<u>Students</u>	<u>Pract.</u>	<u>Students</u>	<u>Students</u>	<u>67-69</u>
		<u>Weighted</u>			
Base # (100%)	384	606	232	152	193
<u>Articling Period</u>					
Excellent	26%	23%	24%	30%	22%
Good	37	30	40	34	35
Fair	25	17	24	27	26
Poor	11	12	12	9	17
Not stated	1	18	0	*	*
<u>Bar Ad. Course</u>			Not asked		
Excellent	--	25	--	30	22
Good	--	29	--	32	38
Fair	--	17	--	21	23
Poor	--	10	--	17	16
Not stated	--	19	--	*	1

*Less than 1%

Question: "Thinking of the period you spent Articling, how would you rate it as an educational experience?"

Table S-20Main Volunteered Reasons for Rating
Assigned to the Articling Period

	<u>Articling Students</u>	<u>Bar Ad Students</u>	<u>Practitioners 67-69</u>	<u>57-66</u>
<u>Rated excellent/good</u>				
Base # (100%)	<u>149</u>	<u>97</u>	<u>110</u>	<u>114</u>
Provided practical experience	46%	42%	44%	40%
Gave sufficient responsibility	21	29	25	25
Provided broad general exposure	28	27	28	20
Principals provided time, guidance	19	27	25	24
<u>Rated fair/poor</u>				
Base # (100%)	<u>83</u>	<u>54</u>	<u>82</u>	<u>50</u>
Too many menial tasks	46%	44%	43%	48%
Principal gave inadequate time, guidance	33	20	30	36
Narrow, inadequate exposure	39	17	28	26
Period too long	28	17	19	10
Insufficient responsibility	18	9	23	20
No reason given:				
#	11	12	7	60
% total sample	5	8	4	7

*Total mentions add to more than 100% - multiple response

Question: "Why do you say that?"

Table S-21The Articling Period: Rating for Six Specific Attributes

	<u>Articling Students</u>	<u>Bar Ad Students</u>	<u>Practitioners</u>	
			<u>67-69</u>	<u>57-66</u>
Base # (100%)	232	152	193	224
<u>Breadth of exposure to legal processes</u>				
Excellent	25%	28%	23%	19%
Good	41	37	32	27
Fair	22	26	26	20
Poor	12	9	19	7
Not stated	*	*	0	27
<u>Opportunity to specialize in areas of interest</u>				
Excellent	26	30	23	21
Good	29	30	23	16
Fair	25	30	36	20
Poor	19	9	18	14
Not stated	1	1	0	29
<u>Adequacy of time spent with principal</u>				
Excellent	21	29	23	17
Good	28	30	21	25
Fair	30	26	25	18
Poor	21	14	31	13
Not stated	0	1	0	27
<u>Learning utility of assigned tasks</u>				
Excellent	24	28	24	19
Good	36	31	26	28
Fair	27	34	34	20
Poor	13	7	16	7
Not stated	0	0	0	26

cont'd.....

The Articling Period: Opinion as to Length
-opinion according to length of time spent

	<u>Articling Students</u>	<u>Bar Ad Students</u>	<u>Practitioners</u> <u>67-69</u>	<u>57-66</u>	<u>pre 57</u>
Base # (100%)	232	152	193	224	223

Time actually spent

12 months or less	46%	49%	46%	25%	not asked
Over 12 months	54	51	54	75	--
Not stated	0	0	0	*	--

Opinion of length

<u>Total</u>					
Too short	2	3	6	5	18%
About right	26	39	40	63	67
Too long	72	56	53	31	9
Not stated	0	2	1	1	6

<u>Those 12 mos. or less</u>	<u>#107</u>	<u>#74</u>	<u>#88</u>	<u>#56</u>	--
Too short	1	3	7	11	--
About right	26	39	44	64	--
Too long	73	55	48	25	--
Not stated	0	3	1	0	--

<u>Those over 12 mos.</u>	<u>#125</u>	<u>#77</u>	<u>#105</u>	<u>#171</u>	
Too short	3	3	5	3	--
About right	26	40	37	63	--
Too long	71	56	57	33	--
Not stated	0	1	1	1	--

*Less than 1%

Question: "Do you consider this period of time: too short,
 about right, too long?"

Table S-23The Articling Period: Opinion as to Length According to Overall Rating Assigned--Articling Students

	<u>Articling Students</u>
Base # (100%)	232
<u>Total</u>	
Too short	2%
About right	26
Too long	72
Not stated	0
<u>Those rating excellent/good</u>	<u>#149</u>
Too short	2%
About right	34
Too long	64
Not stated	0
<u>Those rating fair/poor</u>	<u>#83</u>
Too short	2%
About right	13
Too long	85
Not stated	0

Table S-24The Articling Period: Overall Rating According to Length
of Time Spent--Articling Students

	<u>Articling Students</u>
Base # (100%)	232
<u>Time actually spent</u>	
12 months or less	46%
Over 12 months	54
<u>Those 12 months or less</u>	<u>#107</u>
Excellent/good	52%
Fair/poor	48
Not stated	0
<u>Those over 12 months</u>	<u>#125</u>
Excellent/good	74%
Fair/poor	26
Not stated	0

Question: "How many months in total will you spend Articling?"

Table S-25

The Articling Period: Overall Rating According to Whether
Employed by Articling Firm Subsequent to Bar Admittance

	<u>Bar Ad. Students</u>	<u>Practitioners 67-69</u>	<u>57-66</u>
Base # (100%)	152	193	224
Employed by firm	47%	36%	30%
Not employed by firm	53	64	45
Not stated	0	0	25
<u>Was employed by firm</u>	<u>#71</u>	<u>#69</u>	<u>#66</u>
Articling rating:			
Excellent/good	75%	73%	83%
Fair/poor	24	27	14
Not stated	1	0	3
<u>Was not employed by firm</u>	<u>#81</u>	<u>#124</u>	<u>#101</u>
Articling rating:			
Excellent/good	54%	48%	57%
Fair/poor	46	51	41
Not stated	0	1	2

Question: "Following admission to practice, were you employed for any period of time by the same firm with whom you Articled?"

Table S-26

The Articling Period: Overall Rating According to Size of Law Firm (# Lawyers) Where Articles Taken

	<u>Articling Students</u>	<u>Bar Ad. Students</u>	<u>Practitioners</u>	
			<u>67-69</u>	<u>57-66</u>
Base # (100%)	232	152	193	224
<u>Size of Articling Firm</u>				
1 lawyer	5%	6%	4%	6%
2-4	29	25	29	35
5-15	32	39	39	24
16-30	17	14	16	5
Over 30	16	16	11	3
Not stated	<u>1</u>	<u>0</u>	<u>1</u>	<u>27</u>
% 16 or more	<u>33</u>	<u>30</u>	<u>27</u>	<u>8</u>
<u>Rated Excellent/Good</u>				
Total	64%	64%	57%	51%
1-4 lawyers	72	69	65	68
5-15	66	64	62	70
Over 15	55	58	40	67
<u>Rated Fair/Poor</u>				
Total	36	35	42	22
1-4 lawyers	28	31	33	30
5-15	34	36	38	30
Over 15	45	42	60	27
Rating not stated	0	1	1	27

Question: "Check below the approximate number of lawyers connected with the law firm with whom you are presently Articling."

Table S-27The Articling Period: Overall Rating According to Whether Taken in City of Permanent Residence

	<u>Articling Students</u>	<u>Bar Ad, Students</u>	<u>Practitioners 67-69</u>
Base # (100%)	232	152	193
Articled in residence city	69%	71%	75%
Articled in other than residence city	30	25	22
Not stated	1	4	3
<u>Articled in Residence City</u>	<u>#159</u>	<u>#108</u>	<u>#144</u>
Articling rating:			
Excellent/good	66%	71%	57%
Fair/poor	34	28	42
Not stated	0	1	1
<u>Articled in Other Than Residence City</u>	<u>#70</u>	<u>#38</u>	<u>#42</u>
Articling rating:			
Excellent/good	60%	50%	55%
Fair/poor	40	50	45
Not stated	0	0	0

Question: "Did you Article in a locale other than the one you considered your home or permanent place of residence?"

Table S-28The Articling Period: Overall Rating According
to Assigned Rating of Bar Ad. Course

	<u>Bar Ad. Students</u>	<u>Practitioners 67-69</u>
Base # (100%)	152	193
<u>Total Rating: Articling</u>		
Excellent/good	64%	57%
Fair/poor	35	42
Not stated	1	1
<u>Rated Bar Ad Course Exc/Good</u>	<u>#93</u>	<u>#117</u>
Rated Articling:		
Excellent/good	62%	56%
Fair/poor	38	43
Not stated	0	1
<u>Rated Bar Ad Course Fair/Poor</u>	<u>#58</u>	<u>#75</u>
Rated Articling:		
Excellent/good	67%	57%
Fair/poor	31	43
Not stated	2	0

Table S-29The Articling Period & Bar Ad Course: Overall Rating
According to Total Income Earned in 1969

	<u>Practitioners</u>	
	<u>1957-66</u>	<u>pre-1957</u>
Base # (100%)	224	223
<u>Income Earned</u>		
Under 15000	18%	5%
15000 - 29000	62	41
30000 and over	17	48
Not stated	3	6
<u>Articling Rating:</u>		
<u>Under 15000</u>	<u>#41</u>	
Excellent/good	59%	--
Fair/poor	32	--
Not stated	9	--
<u>15000-29999</u>	<u>#138</u>	
Excellent/good	51%	--
Fair/poor	22	--
Not stated	27	--
<u>30000 and over</u>	<u>#39</u>	
Excellent/good	51%	--
Fair/poor	10	--
Not stated	39	--
<u>Bar Ad Course Rating:</u>		
<u>Under 15000</u>	<u>#41</u>	
Excellent/good	66%	--
Fair/poor	22	--
Not stated	12	--

cont'd.....

Table S-29 cont'd.

	<u>Practitioners</u>	
	<u>1957-66</u>	<u>pre 1957</u>
<u>Bar Ad Course Rating cont'd</u>		
<u>15000 - 29999</u>	#138	
Excellent/good	54%	--
Fair/poor	21	--
Not stated	25	--
 <u>30000 and over</u>	#39	
Excellent/good	31%	--
Fair/poor	23	--
Not stated	46	--

Question: "Please check in which income group you belong, based on total annual income for 1969 from salary and any distribution of firm earnings for law practice only. (if self-employed, indicate income bracket after deduction of expenses for the purpose of gaining income)."

Table S-30Main Volunteered Reasons for Rating Assigned to
Bar Ad, Course

	<u>Bar Ad. Students</u>	<u>Practitioners 67-69</u>	<u>57-66</u>
<u>Rated Excellent/Good</u>			
Base # (100%)*	<u>#94</u>	<u>#116</u>	<u>#115</u>
Practical, useful	51%	55%	62%
Good precedents, material	28	23	16
Rounds out (earlier) gaps	22	21	23
Good program/instruction	20	22	18
<u>Rated Fair/Poor</u>			
Base # (100%)*	<u>#58</u>	<u>#75</u>	<u>#49</u>
Dull teaching, cram course	97%	81%	69%
Too long, wastes time	21	15	12
Not practical, shallow	12	9	14
Exhausting, too much pressure, superficial	10	23	12

*Total mentions add to more than 100% - multiple response

Question: "Why do you say that?"

Table S-31The Bar Admission Course: Rating for Four
Specific Attributes

	Bar Ad Students	Practitioners 67-69	57-66
Base # (100%)	152	193	224
<u>Value of Documents, Notes Provided</u>			
Excellent	56%	52%	45%
Good	33	38	21
Fair	7	8	4
Poor	3	2	1
Not stated	1	0	29
<u>Method of Instruction</u>			
Excellent	11	12	11
Good	41	35	35
Fair	28	32	19
Poor	17	21	7
Not stated	3	0	28
<u>Quality of Teaching</u>			
Excellent	10	12	10
Good	39	38	32
Fair	34	38	24
Poor	13	12	5
Not stated	4	0	29
<u>System of Examination</u>			
Excellent	3	2	8
Good	24	25	22
Fair	39	36	22
Poor	34	35	19
Not stated	1	2	29

Question: "Please rate as excellent, good, fair, or poor each of the following with respect to your Bar Admission course. example: the value of the documents, notes and similar material provided."

Table S-32Opinion of the Length of the Bar Admission Course

	Bar Ad. Students	Practitioners		
		67-69	57-66	pre 1957
Base # (100%)	152	193	224	223
Too short	11%	12%	11%	19%
About right	56	63	52	58
Too long	30	25	15	4
Not stated	3	*	22	19

*less than 1%

Question: "Do you consider the Bar Admission course to be:
too short, about right in length, too long?"

TABLE S-33

Preference as to Mandatory vs. Optional Subjects
in the Bar Admission Course

	<u>Articling Students</u>	<u>Bar Ad. Students</u>	<u>Practitioners 67-69</u>
Base # (100%)	232	152	193
Course should be:			
All mandatory	33%	43%	40%
All optional	11	8	8
Combination of both	55	48	50
Not stated	1	1	2
% indicating some options	66	56	58

Question: "Do you believe the choice of subjects studied in the Bar Admission Course should be: all mandatory, a combination of mandatory and optional, all optional subjects?"

TABLE S-34The Bar Admission Course. Overall RatingAccording to Whether Taken in City ofPermanent Residence

	<u>Bar Ad, Students</u>	<u>Practitioners 67-69</u>
Base # (100%)	152	193
<u>Overall Rating: Total</u>		
Excellent/good	62%	60%
Fair/poor	38	39
Not stated	*	1
<u>Where Course was Taken</u>		
In city of residence	55	57
Other than city of residence	30	36
Not stated	15	7
<u>Those in City of Residence</u>	<u>#84</u>	<u>#110</u>
Excellent/good	62%	53%
Fair/poor	38	46
Not stated	0	1
<u>Other than City of Residence</u>	<u>#46</u>	<u>#70</u>
Excellent/good	60%	73%
Fair/poor	38	27
Not stated	2	0

*less than 1%

Question: "Did you spend either of these two periods in a locale other than the one you considered your home or permanent place of residence?"

TABLE S-35

Average Estimated Salary Under ThreeConditions of Admission to Practice

	<u>Current</u> (LLB + Articling + Bar Ad.)	<u>Alt. "A"</u> (LLB + immediate Bar exam)	<u>Alt. "B"</u> (LLB. + one yr combined Articling & Bar Ad.)
<u>Practitioners 1957-66</u> (N224)			
Starting	\$8680	\$7337	\$8326
After 2 years	11803	10538	11523
After 5 years	17750	16683	17435

Response rate 78%

Practitioners pre 1957
(N223)

Starting	\$8349	\$6813	\$7874
After 2 years	11013	9571	10492
After 5 years	15688	14624	15328
Not stated			

Response rate 51%

Question: "We would like your own best judgement as to the average salary for all legal practitioners at three points in their career; at start of practice, after two years of practice, and after five years.

We are also going to ask you to consider your answers under three different situations (description of alternatives). These latter two are, of course, hypothetical, at this point; nevertheless, in giving your best estimate under each condition, please assume that a significant number of candidates, say 10% to 20% at least, did in fact take the option as described as an alternative to the present requirement."

Appendix IV - Verbatim Comments

A. Articling Students

Student # 1

Most necessary improvements in legal education:

Current reforms of course content are good and should continue to avoid the stagnation that previously existed. The length of the Articling and B.A.C. periods MUST be shortened. It is a colossal waste to have law students fritter away almost two years from graduating before Bar admission. The suggested reforms in this regard now before the L.S.U.C. should be quickly brought into effect.

The value of the case method of law teaching is vastly overrated. It is very inefficient and teaches little of practical value. One year of case briefing should be enough for anyone. If one doesn't then know how to read case, he should quit. Blind adherence to the case system MUST GO.

- Rated articling "good" because:

I saw a good variety of things. My principal never failed to let me in on interesting transactions and was always willing to discuss points of law or practice with me. However, I think I did a little too much Real Estate and not quite enough in other fields.

- Yet he felt articling was too long. Although confusing the source of the one-year program alternative, he said:

The total time of Articling + BAC should be ONE YEAR as suggested by the Education Committee of the L.S.U.C., to run from June of graduation year to the following June and admission to the Bar. I'd be in NOW under this system.

As the reason for taking a loan during his articling year:

This was to pay the interest on my own Government Loans from November 1969 to September 1970. This is stupid. You can barely exist on what you make in the Articling year. Law students should not be required to pay back anything until six months after Bar admission.

He chose Alternative B (1 year post-LL.B.) because:

Very few people could pass Bar exams immediately after the LL.B. Bar exams are on practical matters and all you get in Law School is theory. Unless you worked in law offices during the summers of the LL.B. (and few do because \$ is the big thing and lawyers are as stingy as they come) you'd have little chance of success. No. (iii) seems most reasonable under the circumstances - it cuts down the time between the LL.B. and Bar admission and gives adequate opportunity for exposure to practical work.

Student #2

An older student (30-34), he felt the most important improvement was not in the education system:

The legal education system is now quite good. It is the bar and bench who now need "education".

He rated his articling "excellent", although too long, because:

I was given the opportunity to gather experience in those areas in which I was interested. I was given adequate responsibility, and I did not have to work in fields of law in which I was uninterested.

Student #3

His general concerns were:

More involvement with the non-academic portion of the legal profession during the LL.B. course. Shortening of the articling-Bar Ad. period to one year or 15 months commencing in June following the LL.B.

He articulated with a firm of 30+ lawyers, rating the experience "fair".

Too long. Not sufficient responsibility in larger firms. Half the time we are solely messengers. Lack of interest on the part of senior men. They don't consider it an educational program.

As with many students, he was quite critical of the law school, even though there were no specific questions on the LL.B. in the questionnaire:

Law school is becoming overly academic. The Bar Ad is basically a course on practical procedure - and it is necessary to cover all important areas - even specialists should have a working knowledge of all fields in his profession.

When in practice, a lawyer basically uses his knowledge gathered from the general, ordinary basic courses such as contracts, torts, real estate, etc. The law schools are losing sight of the fact that they are educating men and women to become members of a practical profession where they will at some time be expected to have a working knowledge of all areas of law.

Basically the new interest taken by the law schools in social policy, inter-disciplinary studies, etc., is great and broadening - but they tend to be too academically inclined.

He also preferred Alternative B, because:

Some practical experience is a good thing before being called to the Bar and before being examined on the practical aspects - but it is ridiculous to officially start the too-long articling program in September, i.e., 3 1/2 months after graduating. The Bar Ad. is probably the best of its kind anywhere but it seems inefficient in parts, i.e., the morning lectures - the professors apparently just read from lecture notes already handed out to the class - then the students wait around for sometimes 4 hours for tutorial classes - this is a waste.

Student #4

This student was concerned about articling salaries paid by firms, and the Department of University Affairs policy re. articling salaries:

In both Hamilton and St. Catharines it appeared the articling going rate was controlled by the three or four biggest firms - St. Kitts was 80-85 and Hamilton 75-85. Both are lower than Toronto, the cost of living doesn't vary as much as people say and the instruction is much poorer in the two former cities.

A student shouldn't have to borrow money to live while articling, so the rates are too low. Further, when applying for a student loan, the Dept. of University Affairs is of the opinion you should have been able to save during that period - Joke.

Student #5

With impeccable politeness this student rates his articling experience "good" because:

It was my personal experience that I had not much of responsibility entrusted to me. I was an errand boy. But it is important to know where every office is.

B. Bar Admission Course Students

Student #1

For this student, the most serious problem lay with his law school:

A more realistic and practical approach taken by law professors, Practical experience by the professors themselves. Instructing students on how to deal with the ordinary problems in practice and not all on the level of multi-million dollar actions.

He rated his articles with a small (2-4 lawyers) firm as "excellent", although too long, because:

Variety of work under the excellent, conscientious instruction of the senior partner.

His Bar Ad. period was "fair" because:

Too long, too much repetition, many problems are obvious in nature.

In the open space for any further general comments, he wrote:

I feel that the law courses should not be shortened to too great an extent inasmuch as the older a lawyer is, the easier he finds it to deal with people and the more mature his judgement becomes. However, the present course ranging from 7 to 9 years is not at present being used to its best advantage. I would therefore indicate a reduction in the period of 6 months and a change in the educational period itself basically bringing it more up to date and secondly, and perhaps most important of all, requiring that the

law teachers themselves have some practical experience. Personally, I found many professors who received their call to the Bar merely by teaching in a law school for several years or being out of practice very briefly. I feel a professional man must be taught from a basically practical point of view which I must concede is lacking in the modern law professor.

Student #2

Articles were rated excellent:

The firm where I articulated gave students a maximum of responsibility and practical training.

Bar Ad Course rated poor, because:

It is nothing but a cram course which puts a premium on memorization - the worst educational experience I've ever been through.

Student #3

As with many students, his comments show an undercurrent of great frustration, hostility or even outrage which the quantitative tables and charts cannot convey. The most necessary improvement in the legal education system in Ontario was:

Abolish Bar Ad course, replace it with a good loose-leaf system on each of the relevant topics - much like the CCH tax reporter service - and keep the loose-leaf services up to date. But for God's sake get rid of that useless Bar Ad Course - a waste of time!!!

He rated articling poor because:

All we learn is office procedure - how to be a junior executive. Other than that, we learn how to research law, which law school teaches better, and how to run messages.

He crossed out "poor" in the Bar Ad rating questionnaire, and wrote in "ridiculous," giving as a reason:

Nothing educational is involved. It consists of a series of memory-cram courses. We are forced to memorize crap we would never recall during practice without looking it up - e.g., the 55 steps in preparing a divorce application.

Still angry, at the end of the questionnaire, he wrote:

A Bar Exam should be just that--an Exam. It should test whether a man should be a lawyer. What we have now is an articling system that does nothing but provide cheap labour and a Bar Exam system that any idiot could pass, provided he has a good memory for picayune detail. A Bar Exam should test a man on the full range of law - perhaps we could have 6 exams, and a candidate could be asked anything on any exam. Perhaps he should be given a set of facts and asked to advise each side in the dispute. At least, one exam should be oral. But for heaven's sake, let's get away from childish memory tests and attendance-taking.

Student #4

A more moderate student, he wrote a lengthy essay on the back of the questionnaire, indicating that he had given some time and thought to his answers. He rated his articling "good" as:

My work was basically on my own but with easy access and relationship with the lawyers re problems and information.

He rated the Bar Ad Course "excellent" but qualified this:

Excellent as to set up - the problems which were several evolved from instructors' personalities and the difficulty of screening those who teach or conduct seminars - also inability of director to control benchers and certain course leaders who are rather out of touch with realities of education.

He preferred the Current System to either of the two alternatives because:

Do not feel that person right out of LL.B. could have practical experience sufficient that he could do competent or efficient job immediately. Combined articling and Bar admission would place too much pressure on individual - could not adequately do both jobs.

A very candid final comment was:

Biggest single problem (as above) is length of time to complete education - altho can go to LL.B. after 2 years only small percentage do and a significant percentage because of strong academic record at high school level have taken 4 yr. honour course.

2nd Problem - control of course by benchers who seem to have placed too great emphasis on litigation, apparently because they are heavily weighted on this field.

3. The control of the course must rest with a person or group who are not as removed from legal education and the commencement of practice as the benchers, e.g., the benchers who have over the past few years been in charge of legal education used to teach one course at Osgoode. It was without doubt the worst course in our educational career - not because he could not speak or handle the matter but simply because he had no idea how to teach or what the students' needs were. With respect to control of the course, the director must have greater authority; too many men who are outstanding in their field are completely incompetent as teachers, or insist

on imposing their ideas of education, course set-up, or materials to be used rather than the directors - these people remain because the director either can't or won't remove them. Although removing people is not an easy job it must be done if the Bar Ad course is to serve its purpose in all fields.

Student #5

Also rated articling too long, but excellent, as he was:

exposed to good lawyers who delegated a great deal of responsibility - yet gave me ample supervision.

The B.A.C. he rated "poor" because:

never been so bored and exhausted in my life.

He preferred Alternative "A" because it was:

faster. While articling experience is worthwhile - so is the practice of law - one can learn much more effectively if a member of the Bar.

Student #6

As a student beginning specialization in Corporate Law and Taxation, this man's views were rather unexpected.

His first comment was:

It is too long a course. Probably could be completed in 3 years, including bar admission. Law school is basically a waste of time in that lectures are given on an average of 3 hrs. a day, the rest of which is not sufficiently utilized. Case method of learning law is questionable. Should get a footing of basic principles in a course (can be obtained from reading a text), discuss these and then see how applied in a few cases. Relate same to relevant social conditions, values, etc.

Articling was rated "fair" because:

Too much of my time was wasted by not allowing me to utilize my talents or develop as a lawyer. I had relatively good articles but still was subjected to menial tasks and undertakings.

B.A.C. was rated "poor".

His general, unsolicited comment at the end was:

It is hoped that the current outdated system of legal education is altered to turn out not only a professional person but also one who sees his professional status within the framework of a functioning society and not only an individual's means to an end. In other words, there should be an attempt to turn out a person relevant in terms of today's society and not one ingrained with a feudal orientation. This of course isn't the sole responsibility (nor is it the prime responsibility) of a law education. Yet one cannot help but think that if there was some attempt or effort made to teach (if that's possible) one to have a social conscience in his own chosen profession, certainly the legal profession would be better for it, and I would venture to say so would society as a whole.

Although it is improving, the situation with which the legal profession is faced is that it turns out very conservatively oriented persons who, after graduation, inevitably acquire a degree of material comfort fairly quickly, during which period they are too busy to really lend their talents in more than token ways in order to improve their society. After acquiring a vested interest and more time to become involved in civic, social etc. problems and affairs, this conservatism more often than not defeats their usefulness as proponents of meaningful change in whatever areas demanding such e.g. our system of justice as a whole. Although lawyers appear active in various areas, e.g. politics, business, etc. their entire training has been oriented to

making the existing status quo function and very little goes into questioning the value, relevance or relative merit of such. Hence there is a distaste connected with our profession and a growing disillusionment with our entire system of justice both from the public's point of view and also with many lawyers forced to function within it.

C. Recent Graduates (67-69 Practitioners)

R.G. #1

A Queen's graduate, specializing in corporate law and taxation with a 30+ firm, his statements were very abrupt and to the point. General comment:

Shorter qualification period.

Articling:

Too long.

Bar Ad. Course:

Anti-climactic; no real academic stimulation. Boring - but certainly useful.

R.G. #2

A Western graduate in his own one-man criminal law practice, rated Articling too long, but excellent because:

It teaches you that you are dealing with people and not just abstract opinions.

He also rated the BAC "excellent":

It covers all the practical application of the law in all areas which was not taught at law school. Gave invaluable precedents.

R.G. #3

An Osgoode Hall graduate, general practitioner,
said re necessary improvements:

Many of the changes have been implemented
since I left law school. Bar Admission
Course is very boring and students are
treated as in kindergarten.

He liked Articling because:

Obtained fairly wide experience by
changing firms at 6 months. General
firm first - then labour law.

He rated BAC poor, because:

By reading printed material I
learned a fair bit but teaching
techniques terrible.

R.G. #4

A University of Toronto graduate specializing in
real estate and commercial law with a 16-30 member
firm, wrote:

Reduction of Articling period and
complete revision of method of procedure
of Bar Admission Course.

Articling while "too long", was rated "excellent"
simply:

Because it was.

He rated the BAC "poor", found it:

Boring, pedantic. Too much emphasis
on litigation. Too structured.
Kindergarten approach to teaching
(there were 8 hours of good lectures).

R.G. #5

Although it would be expected that the Bar Ad Course would be of greatest relative benefit to the general practitioner, starting alone (vs. the legal specialist) this somewhat bitter general practitioner, starting alone immediately after his call to the bar, wrote in "wretched" in the space for "poor" on the questionnaire, because:

"Cram-course", "pressure-cooker" educational set-up and run by people without education, philosophy or teacher's training - a thoroughly pseudo-educational initiation into the legal fraternity."

R.G. #6

This commercial and real estate specialist with a 5-15 man firm, saw the key problems as:

B.A. and LL.B. + Articling + Bar Ad =
3 years too many. Bar Admission course atmosphere is sheer terror.

He found Articling "excellent" because:

I was with a large Toronto firm that felt that it was their responsibility to help its students become good lawyers.

He rated the BAC "poor" because:

The constant pressure is not conducive to an education experience. I forgot everything two days after writing the exams. Thank God for the notes.

As a final comment he wrote:

I am very happy in the practice of law - now that I'm out of the damn school system. If I was graduating from high school and knew what I now know of the law school

system, I would not become a lawyer despite the fantastic life after graduation.

R.C. #7

This corporate securities specialist saw the general problems as:

The LL.B. course should be concerned to a much greater degree with teaching the student how to practice; the practical techniques necessary so that the student does not come out of school with a practical ability inferior to that of the average legal secretary; equality of articling opportunity; specializing at the LL.B. level; shortened period from LL.B. graduation to admission to Bar.

His articling was "poor"

Not able to pursue your interests, used for many meaningless tasks with repetition of the same, not broad enough experience, too long, articling is not co-ordinated as an "educational experience". The firms use students for their own purposes essentially.

The BAC was rated "fair";

Too many areas are attempted to be covered; often seminar leaders are not prepared sufficiently and the seminars prove to be too long and boring; printed notes should be handed out before the courses so that they could be studied, lectures reduced in number and more time spent in discussing the materials; exam system is inadequate; the practical emphasis is good but should provide for specialization.

As with many other recent graduates, he stressed that in the BAC curriculum:

Students should be allowed to specialize in an area and therefore would cover it more fully, e.g. corporate law would include securities, mergers and acquisitions, taxation, mining and strategy and techniques regarding same would be stressed.

As an example of an occasionally expressed comment, re discrimination in articling hiring practices, he suggested:

If an articling system is in effect there should be an attempt to have some equality of opportunity, e.g. firms should set out specific areas they are willing and able to offer experience in, students who desire certain experience would be matched by lot, areas experienced would last for 2 or 3 months then the student would change topics and be matched up again and probably move to another firm.

R.G. #8

Wrote at the end of the questionnaire:

When I wrote the Bar Admission examinations, marks in the subjects were not provided. I saw and can see, no reason for marks not being posted after every examination, so that people can know where they stand, and seek help if necessary. The system involving unjustifiable secrecy, among other things, caused many to doubt the fairness of choices made for appointment, to Judges' assistantships.

D. Practitioners, 1957-1966

Pract. (57-66) #1

A Criminal law specialist practicing as a junior partner with a medium-sized firm, this respondent disliked his articles because:

The firm I articulated with had no program for students. We were well-educated cheap errand boys. Even where there is a program I believe not enough responsibility is given.

The BAC was rated "fair", as:

Far too much time spent for the amount learned. At that stage of development the student has no interest in, or patience with a lecture type program - with enforced attendance.

Typically, he rated the documents and notes provided "excellent", the quality of teaching "fair", and the system of examination "poor".

As a rather unusual general comment at the end, he stated:

There has been talk for years of making an LL.B. a more practical course. I hope that it remains as academic as possible. There is plenty of time to learn practical application and I don't believe this can be taught in school. On the other hand, in the busy law practice there is little time to devote to academic improvement; so we should have a good exposure to this aspect of the law - in the place where it can best be taught - the university!

The present practical training program is far too long! (1) After spending all those years at University the student is anxious to get going and tackle the world! However beneficial the present system might be in theory, in practice, because of this impatience, the students generally become thoroughly bored with (or impatient with) articles after about 6 months. They have generally had their fill of the Bar Admission Course after 1 or 2 months. Obviously, very little is learned after this state has been reached. (2) In addition to the foregoing, my own experience and that of most of my contemporaries was that our articling period was simply dead time. Nothing was learned. We earned very little; and simply provided cheap labour. I learned more in the first month of practice than I did for the whole of the articling period!

Prac. (57-66) #2

This respondent started practice with a law firm, but was now in a position with other than a law firm. Aged 35-39, he graduated before the BAC started via the earlier Osgoode Hall fourth year program.

As a former criminal law specialist, he liked articling, even though for 24 months, because:

I articled with a specialist in my field, got wide practical experience in it, with just a nodding acquaintance with general practice - enough to convince me I didn't want to do it.

At the end of the questionnaire he included this rather lengthy but unusual comment (which is reproduced unedited):

The largest number of lawyers end up as "business men" as the handmaidens of business, and this facet of social life has had the most attention paid to it by lawyers (Property, Taxation, Corporation, Wills & Trusts, etc.). Lawyers have served the interests and needs of a very small percentage of the population and only marginally served the interests of the vast public (buying a house, making a will). To serve the interests of a larger proportion of the public, the business orientation of lawyers, and their training needs to be shifted, social conscience fostered, the agencies and methods of bringing about social changes given more attention - if we are to avoid destructive forms of social conflict it is necessary to open up alternative peaceful methods for change to occur - this can occur through law changes, but there must be lawyers to serve the needs of those who have until now not had easy access to spokesmen, because of ignorance and financial inability to procure the services of lawyers. Lawyers on the other hand "could not afford", as

businessmen, to serve them. I do not wish to be misunderstood, there is a vital and important role for lawyers to serve the business community, but the emphasis has been too great.

I should like to see recognition given to articling in other than traditional law offices; e.g. welfare boards, housing agencies, consumer agencies, adoption and social agencies, tenants organizations, domestic and juvenile courts, magistrates courts, etc, - specialized training to sit as judges, magistrates, arbitrators and administrative bodies of all kinds. Law training in law offices provides a very specialized kind of business training along a number of business dimensions. Of course these have been the financially most rewarding aspects of law and probably will continue to be for many years to come because of the clients they serve. But legal training which has been locked in this historic pattern needs to be somehow freed from it.

The longer the legal training taken, the greater the financial pressure on students to take to traditional law to make money for themselves and in some cases their dependents. Younger, more idealistic students, might risk few years in less lucrative jobs that provide other kinds of rewards when their responsibilities are less onerous - and can be enticed into these areas, some to remain there as a legal career.

To break or shift the business-law axis will mean giving recognition to legal training of other sorts, now difficult to imagine because we now think in the traditional moulds. I can envisage great opposition to this, because the present system needs recruits and is the established system, and well placed to control legal education. My aim here is again not to disrupt the business-law axis, only to provide other alternatives to reach out to a wider clientele, to spread out legal services across a larger social arc. If we

are to avoid violent social change, we must seek creatively for the alternative means, and lawyers as spokesmen to participate in that aspect of on-going social life, and ways of getting them into it.

Compromise, adaptation, evolution, has been the traditional Canadian manner of moving and it seems to me that this is the time to consider experimental development in the direction I have suggested - it can come in the articling period of training, with the groundwork for it laid in the academic free-choice courses at the LL.B. level.

E. Practitioners - Pre-1957

This group had a very high non-response rate in the open-ended questions. Comments tended to be disinterested and superficial. However, several expressed fairly strong views not directly solicited by the questionnaire, but of relevance to the problems of the senior practitioner group. One example has been selected.

A University of Toronto graduate of the early 50s, now in solo practice specializing in commercial law and real estate, his first comment was:

Start from the top - limit the "dead hand" of the Benchers. I have no experience with a Bar Ad course - I learnt in the "school of hard knocks" BUT the graduates therefrom are semi-literate and do not appreciate the power of intensive preparation for trial viz. WORK.

Typically, on the Bar Ad Course he said:

No experience, therefore no comment.

At the end, he wrote:

In respect to options, mine were chosen in such a manner that I did not listen to lecturers in the field of "trade marks", "patents", "bankruptcy", "building contracts". Thank God! 90% of my success has been in these fields - my mind was not clogged by listening to other people in advance of need.

For the past three years I have looked at the graduating crop carefully - I cannot find a literate, intelligent being in the lot - reaction disgust and disdain.

Why should our answers be "quite anonymous?" You may, if you are not a computer, confront me with questions at any time.

F. Bar Ad Course Instructors

Instructor #1

Felt a contraction was necessary:

Bringing the articling period and the Bar Admission Course period closer together so that two years are not used.

Students are capable of heavier work load and impatient with present drawn-out system.

Instructor #2

Was critical of the method of instruction:

Too much emphasis is placed upon the memory of the student and requiring him to regurgitate this memorized information as an examination. I feel sure that many students who will make excellent lawyers are unable to perform under such circumstances.

Instructor #3

An instructor for 6-10 years, teaching Surrogate Court Practice, his comment re general improvements necessary in legal education, was:

No thoughts on matter."

His suggestions for improving the BAC:

Instructor should be seated apart from students to facilitate confidential marking and/or notes. Materials should be assembled (for students) prior to commencement of course.

He preferred the current system of admission to practice because:

The course as set up now is good.

Since he had been teaching his course, he had never found it necessary to substantially review his course.

Instructor #4

A recently graduated corporate law instructor, he saw necessary improvements as:

Raising of standards of entrance and of graduation so as to admit to profession those with aptitude, ability and desire. Shorten the 5 year period of legal training, e.g., by staggering periods. Avoid some of juvenile practices in teaching period of Bar Admission Course - e.g. reading of prepared lectures, taking attendance, etc.

As one unusual suggestion re the LL.B. course:

Raise standards. Allow specialization.
Explore avenues of permitting some
"articling" while achieving LL.B.

Changes in Articling and the BAC were necessary:

Signing of articles should not be as automatic as it presently seems. A principal should give a confidential report to the Law Society on the student - the report would then be discussed with the student if necessary.

Abolish reading lectures. This wastes great number of man-hours. The lecture period should be to discuss general principles and questions arising out of printed lecture notes. Graduation standards should be higher.

Within the BAC he suggested two branches, or streams of courses, one for those who intend to practice in that area of law, another for those who do not intend to specialize.

Almost unique among instructors, he voted for the immediate exam after the LL.B. option because:

Those with ability should not be held back.

Instructor #5

Practicing for 10 years, this new instructor saw the major improvement as:

Law professors should have more practical experience before teaching.
I find a lack of knowledge of every day practice in law teachers.

Re Articling:

Less use of students for menial tasks,
greater use of students for legal aid
in minor cases.

and BAC:

More thorough oral examination and
appraisal of students. Better teachers.

Finally, he expressed concern that the present BAC
left the public less than adequately protected:

I would like to see a system of
specialization developed. There are
too many lawyers handling legal situa-
tions with a degree of skill less than
those specializing in certain areas of
the law.

Instructor #6

Teaching Creditors' Rights, this respondent expressed
a typical view as to the most necessary improvement:

We need thinkers as well as technicians.
We need lawyers who also can relate to
people - the people who hire them. The
relationship between lawyers and their
clients is worrisome - especially to the
non-corporate client. The humanity is
disappearing out of the solicitor-client
relationship.

Re the new LL.B. program:

In a state of change; now too early to tell.

Articling was:

A poor way to receive practical experience.
Perhaps period workshops under the aegis
of the Bar Admission Course - with practical
problems to be solved and discussed.

The BAC was:

Too structured and tense for many -
it's a return to high school concepts.

G. Law Professors

This group provided the greatest variety of comment, and generally wrote longer answers to each question.

Only a few samples are included.

Professor #1

Rather openly questioned the increase in the length of the total process because of law schools' admission practices:

Law schools are now "informally" requiring that entering students hold degrees. In law school performance, there is no notable distinction between two year and three year entering students. Law schools are moving towards "formally" requiring a degree solely so that law schools may become "graduate" schools on the Ontario government's monetary scale and hence eligible for a greater grant per student. Considering the cost of a university education to the taxpayer, surely it is sounder to revise the present government scale than to require an extra, unnecessary year of all entering students.

Professor #2

A teacher for more than five years and one of the few carrying on an outside practice, a former full-time practitioner for many years, suggested:

Re-examination of the entire system comprehensively and objectively and not, as now, of its separate parts as independent of one another and under the auspices of the licensing authority. Accreditation of law schools, and law firms for articling students by an objective authority other than the licensing body. Abolition or drastic reform of the Bar Admission course. More control from an educational point of view over the articling period. Enrichment of the academic content of law schools by "clinical" material, not in order to show "how it's done" for it can never do that efficiently, even if a university were a proper place for that, but to make certain essential courses in the curriculum more understandable and interesting to students whose lack of experience makes them unable to relate to the materials. Less "Americanization" of materials, terminology and methods including the social problems chosen as subjects of seminar course. Instilling in law school faculty a sense of responsibility to deal with certain areas now easy to ignore on the fallacious argument that "they get that in the bar admission course."

On the control of articling, he advocated:

Place it under auspices of educational authorities and introduce more supervision over it to ensure that it is being used to the optimum extent for educational as opposed to service purposes.

Re the BAC:

Seriously consider abolishing it.
Certainly eliminate the time-waste which now characterizes it.

Professor #3

Felt that major improvement required was:

Greater co-operation among those responsible for legal education at its various stages, i.e., law faculties, Bar Admission faculties, law firms.

Re the LL.B.:

End total optional system. Require students to choose a number of courses from within established categories of courses, e.g., Public Law, Corporate & Commercial Law, Jurisprudence.

Professor #4

Teaching in Ontario for over 10 years, this professor was educated in the U.S. and has four university degrees. He suggested shortening the LL.B. by one year, and eliminating both articling and the Bar Ad Course. His final comment, based on his U.S. experience, was:

The goal is the lawyer who can provide the most competent service at the least cost to society and himself. I have watched young American lawyers in action who did not go through the Ontario system. They provided services of a higher calibre than their Ontario counterparts of the same age.

Professor #5

Just teaching for one year, this professor expressed a common attitude towards the Law Society:

Articling and the BAC will bring students down to the realities soon enough. We should excite them with the philosophical joys of law. They will be better lawyers for it. In a word, we should ignore just

about everything the Law Society tells us would lead to better legal education.

Re the BAC:

My feeling is that the whole BAC is an insult to the students' intelligence. In fact, the BAC is probably the aspect of legal education which is most in need of your scrutiny. It seems to be too long, too boring, pitched at too low a level and insofar as it sets young lawyers' attitudes about the law and lawyers it does an immeasurable disservice to Canadian (or, at least, Ontario) society. I gather the BAC places a premium on a lack of the following qualities: imagination, innovation, experimentation, interestedness, curiosity, responsiveness.

Professor #6

A former practitioner, with teaching experience outside and in Ontario, saw the need to:

1. Develop a two-tier structure for the profession (i) lawyers trained in the universities and having higher academic requirements than at present. (ii) legal assistants trained in technical colleges.
2. Carry curriculum revision further to give legal problems of low income people the same coverage as legal problems of high income people.

As did several professors, he suggested that law schools:

Accept students after one year of arts or science if they have a first class average.

Re Articling, a proposal somewhat analogous to medical internship:

Abolish it. Require instead that for one year after admission to practice, a lawyer may only practice as the salaried employee of another lawyer and in his office.

Re the BAC:

Keep it brief. A month should be enough.

Professor #7

A newly-hired professor expressed a widely held fear of the abolition of the Bar Ad Course:

To remove a Bar Admission Course entirely would probably have the effect of inducing the Law Society to impose curriculum requirements on the universities which would be a retrograde step in my opinion.

Professor #8

A former practitioner now teaching for over 10 years, expressed the theory-practice dichotomy:

I think the student needs practical experience and how-to-do-it training before being let loose on the public. I don't think we should try to give that training here. We have more than enough to do and, in a sense, more important things to do.

He was also candid about the common fear of practical training encroaching upon the theoretical:

I went through Osgoode Hall from 1930 to 1933 under a combined lectures - office work program. As I look back, I think it had advantages but they were much outweighed by the disadvantages. It wasn't until I had been 5 years at the bar that I recognized

what I had missed - owing to the outbreak of war in 1939 I was unable to catch up - I have been reading ever since trying to get what I missed. I wouldn't want to see even an approximation of that program reintroduced. That is why I am nervous about "clinical" work and practical work during the LL.B. program. If students could afford to work in law offices during the summer vacations and could be sure of getting work there, I would approve of that type of practical training.

Professor #9

Felt that there was a great need to evaluate continually the success of legal education. He said, about the LL.B.:

Organized testing of the quality of teaching. Post-graduate evaluation by graduates of the value and quality of courses taken. More intensive investigation of "practical" subjects like practice and procedure. Reduction of numbers of options with little content or intellectual development.

And Articling:

Regular auditing of the quality of articles - akin to spot financial audits.

Professor #10

On specialization in law:

Graduate studies (LL.M.) specialization. We are like the medical G.Ps of the 1890s. Only through specialized training can we move ahead.

Professor #11

A very experienced teacher with over 30 years' experience (about half in Ontario) voted for Alternative "A" because:

My own training, bar admission, and early professional life were in the U.S. My practical observation for comparative purposes is that where, as there, the second alternative is followed, equal competence is developed. The young lawyer's experience is gained by association with older lawyers, true, but as a junior practitioner, not a subprofessional.

Professor #12

Felt that the time horizon of legal education should be expended:

It is essential we carefully anticipate what the role of the lawyer in 10-20 years will be and plan our present educational program for that.

Professor #13

Was critical of Bar Examinations, based on American results:

The Americans have tried (b) i.e. exams without a course, but it has (I think) failed. Students simply cram for the exams in an unthinking way. Many fail at first but almost all get through in the end. So no useful function is served. Nothing is learnt and no incompetent practitioners are excluded.

Professor #14

Teaching for more than 10 years, he expressed an unusual attitude toward the LL.B. for a Canadian law professor, coupled with a suggestion for what further training might follow such a degree:

It might well be shortened to 2 years with a third year of specialized training in areas of great vocational

importance for those wishing to practice and an optional third year of advanced study for others.

As for Articling:

It should be abolished.

And the BAC:

It should be drastically shortened or abolished.

Professor #15

Having practised and passed through the present post-LL.B. training, he suggested, as did several others, that the LL.B. would be improved by the:

Introduction of clinical training as part of the law school.

Re Articling:

Should consider its abolition - does not afford students with equality of training because there are not enough "good" law firms.

As for the pedagogy and the Toronto/Balance of Ontario problems in the BAC.:

The pedagogy of this course is dreadful - clinical value appears minimal - if it is to be continued, should be decentralized as it is unfair to demand students to return to Toronto after they have become, or are in the process of becoming, settled elsewhere in the province. Could send everybody the precedents and forget about the course.

A suggestion made by this respondent and a couple of others was the introduction of a Law and Poverty course in the Bar Ad curriculum.

Professor #16

Another experienced teacher proposed:

More clinical training in the law schools. Screening students in a practice qualification and/or an academic qualification.

He was concerned that legal education should not be only for lawyers:

I think serious thought must be given to para-legal personnel. At the present time, lawyers are charging high fees for a great deal of work which is being done by unofficial para-legal people, particularly in real estate and estate work. I do not know how much longer the public will stand for this. Something must be done to improve relations between bar and law schools.

Professor #17

Emphasized that the much-vaunted protection of the public from incompetent practitioners, given as the *raison d'etre* of post-LL.B. training, was largely illusory because:

The articling period simply cannot accomplish its purpose of giving graduates practical experience to safeguard the public. A lawyer of many years can hold himself out to know about an area of law in which he is ignorant. The articling period cannot protect against this.

Professor #18

Suggested that in addition to the scope of the present survey:

You should consider the problem of continuing education of lawyers.

Professor #19

An American who recently began teaching in Ontario,
he felt the need to:

Be more receptive to idea of part-time students (who may require, say, 4 to 6 years to complete a 3 year full-time program, for various good reasons). Present policies are unreasonably discriminatory against economically disadvantaged, those with families, older applicants.

As for post-LL.B. training, his view was somewhat
cynical:

As an 'outsider' (U.S.) with only one year of Canadian experience, it seems to me that 'Articling' is primarily a device for making it difficult to become a lawyer and hence hold down the supply. The Bar Admission Course may be useful in providing certain practical and procedural training which cannot be squeezed into the three year LL.B. program. Neither should be required for admission to the Bar.

APPENDIX V

FRONTIERS OF LAW AND LAWYERSHIP:
LEGAL EDUCATION FOR THE JUST SOCIETY

Notes for an address by the Honourable
John N. Turner, Minister of Justice and
Attorney General of Canada, to the Fall
Convocation, Osgoode Hall Law School,
Toronto, Ontario, October 18, 1968.

Frontiers of Law and Lawyership:
Legal Education for the Just Society

Today, in an age of confrontation, our social problems become our legal problems. De Tocqueville made that observation years ago. And our problems are legal problems precisely because they are social problems to which the legal process is both relevant and necessary. In a world where the dynamics of social change meet the frontiers of law and lawyership, it is society itself which has become the lawyer's client.

What is the relevance of all this for us as students of the Canadian legal process? Most of us have not even begun to consider that the manner in which the legal profession approaches social problems affects the way these problems are resolved.

For in a rapidly changing complex society, a new social order demands of us new frontiers in law and lawyership. As the state arrogates for itself an increasing control over the planning and setting of priorities of all values in society, more and more people are demanding greater and greater protection from the abuses of that administrative process. Conversely, as more and more of these values become possible as personal goals in an inoreasingly affluent society, more and more members of our society are asserting

a claim of right to participate in all of these values.

We are witnessing what has been described as "a new search for human values and relationships - relationships between man and man, and between men and government - that have meaning in the technological and psychological context of our age.

What this search and the accompanying changes demand is not a law and order that freezes man into predetermined patterns, but a law and order of change, of movement, of options. Yesterday's order, if it is unresponsive, becomes tomorrow's oppression.

Accordingly, just as the shaping and sharing of all democratic values in the Just Society must not be the exclusive privilege of the few, but the inclusive right of all, so the law must not be the exclusive prerogative of the privileged, but the privileged right of all. All must have equal access to the law. If we are to speak of equality before the law, the law must protect all equally.

If, therefore, the right to bail is the prerogative of the rich, and preventive detention the plight of the poor; if privacy is the right only of those who with counsel can claim it, and invasion the deprivation of those who unwittingly suffer it; if society distributes justice only to those who through counsel can claim it, and withholds it

from those who without counsel are denied it; if it indulges one class of society but dispossesses another - if, in short, there is justice for some of us, but not equal justice for all of us, we dare not speak of the just society for any of us. We can no longer ask for whom the bell tolls; in a just society, it must toll for all.

How have we of the legal profession, as architects and guardians of those frontiers of law, responded? Are we responsible for missed opportunities as well as for unfulfilled obligations? We lawyers have been accused of being impervious to change. Some have even accused our profession of being a barrier to change. And what about our law schools?

Are we in Canada guilty of that charge? What are the goals of the law school? First, instruction, in the sense of equipping students with what Professor John Hazard of Columbia Law School has called an "enlightened theoretical apparatus" - or what my old friend, your Dean Gerry Ledain has referred to elsewhere as a "legal mind" - together with the technical competence for the professional art of lawyering. Second, research, in the sense of the achievement, transmission, and application of knowledge but, even more important, moving the frontiers of knowledge forward. And third, community service, in the sense of relating the law student to the community. If these are the goals, how do our law schools measure up?

What about instruction? I have always had the suspicion that our law schools have vacillated between training our students in the technical skills of the art of lawyership and developing a legal mind or enlightened theoretical apparatus. We may have failed in both: in graduating neither the skilled technician nor the critical legal mind. Have we also, in seeking to develop a "legal mind", too often conjured up the static representation of the law as a seamless web of principles existing in a "heaven of legal concepts?" The case method may be posited on an anachronistic view of the legal process as a technical body of rules existing apart from rather than as a part of the social process. On the other hand, in seeking to train students in the technical skills of lawyership, have we all too often presented a jaundiced view of what law or lawyership is, what it should be, or what it can be?

Law school curricula nourish the commercial sector. Business law constitutes the core; poverty law and the rights of the dispossessed i.e., the poor, the mentally ill, the illegitimate child and related categories, are relegated to the penumbra, if considered at all. Indeed, it appears at times as if the curricula of the modern law school have been drawn up by the local chamber of commerce. This is not to suggest that the commercial sector should not be represented on the curriculum; but only that, in an increasingly techno-

logical, bureaucratized, and urbanized society, other sectors of society and accordingly of law must be given equal time.

In this connection I should like to indicate how pleased I am that this law school has already embarked on an exciting and challenging program of instruction in social areas of the law. These include legal problems relating to the urban development of our country, with emphasis on problems in housing, the consumer and our low income population. The combination of these new approaches with related clinical service involvement for senior students is an initiative I heartily endorse. The success of the student legal aid program as a clinical application of theoretical law is most commendable. I would hope other law schools would step up their activities in this area.

The lawyer must not cast himself as hired gun, or dart thrower, for the privileged class. Law schools must be more than conveyor belts graduating students into the corporate structure. There is of course nothing wrong with the lawyer as an advisor to business. That is an essential legitimate function. But the lawyer should also envisage himself as public servant, professional administrator, advocate of special minority interests, and public interest pleader.

What about the second goal of research? Society is the lawyer's client, but how much has the lawyer bothered to learn about society? How familiar have we lawyers become with the

behavioural, biological and environmental sciences? - with that scientific knowledge relating to man and his environment? How many of our law professors have the methodological skills to go beyond the mere study of words to investigate the actual operation of the legal process where it counts - in terms of its impact upon the lives of people?

The fact is that we know remarkably little about how the legal process actually operates. We do know that with investment of time and money, we could find out a great deal about it. For instance, we still know very little about what juries actually do. What is the real impact of admitting or excluding evidence which has been illegally obtained? What is the real impact of a particular judicial decision? Who, in fact, receives what kind of penalty for what kind of offence? How is blame to be divided between a person who commits an act and the persons and environment which laid the groundwork for the act?

What do we really mean when we speak of the "best interests of the child?" The answers to these questions - and hundreds like them - is that we do not know, that we could find out, and that we are still not trying enough to find out.

Decision-makers in all branches of law continue to follow rules, change rules, or make new rules in what is essentially a factual vacuum. It is time, as Professor Kalven of Yale has intoned, to "empiricize jurisprudence, and intellectualize fact - finding". We surely don't want law schools that are social

vacuums - where brilliant, but somewhat ostrich-like, law professors alternate between sitting in their offices, endlessly sifting through the morgue of appellate judicial opinions, and standing in their classrooms where they endlessly ask uninformed students unanswerable questions about irrelevant matters.

Finally, how do our law schools qualify in providing an apparatus of community legal services? Do our law students receive the clinical training necessary to equip them as professional men and women involved in the urgent problems of our world? Law is not something in the abstract. A lawyer needs more than a well-furnished legal mind and specialized technical skills. He needs the clinical experience that comes from participation in the urgent, urban issues of our age. Such a clinical program might revolve around a Legal Aid Services program. I am glad Osgoode Hall has made a beginning here.

This need not exhaust the possibilities. Law schools might well explore other available options for clinical involvement. For example, summer or part-time internships with parole boards, the police, administrative agencies and so on. Students should have a wider experience than the legal tome - they should plunge into the turbulence of life itself. They should see and live the law in action.

I believe we must all together ask ourselves these questions about the purpose of a law school - as a forum for instruction, research and clinical community service. Many students are already asking them. Students today are more idealistic about their goals in life and yet they are increasingly skeptical about our society and the place of the legal profession in that society. They don't want to be guns for hire, or dart throwers, for the established interests or values. They want the same law for the privileged as for the dispossessed - for the poor as for the rich. They are trying to define a role for themselves as lawyers in the service of a client that is society itself. We fail both ourselves and them if we offer them anything less.

I am glad our professional bar associations are re-examining their relationship to the law school and the law student. Our present institutional framework for policing the qualifications of members of the Bar may be both outmoded and irrelevant. Bar examinations, following a content-pattern borrowed from outmoded law curricula, have often little or no relationship to a candidate's competence for the practice of law. What they demand in preparation is the robot memorization of irrelevant minutiae, and the unthinking assimilation of the endless gimmickry that will be erased from the candidate's mind within a month of the examination - and at that I may be somewhat generous.

I know that serious thought is being given here in Ontario and in some of the other provinces towards a fairer method of measuring the qualifications of a candidate for admission.

I am aware also that the Law Society is currently reviewing the realities and needs of specialization. We must soon arrive at means of recognizing special legal qualifications or defining standards of competence of the specialist. Nor is there yet any method for determining whether professional competency has been maintained after admission to practice: for our admission system is a one-shot affair, and we have no institutional means for requiring, or even encouraging, members of the profession to expose themselves to continuing education in the law. Here again Ontario has been a leader in this country, but there is much to be done.

We began this afternoon by stating what I believe to be a fundamental truth: that social problems frequently become legal problems. The manner in which the legal profession conceives and approaches those problems will determine the manner in which they are resolved.

And so, the frontiers of the law and of the lawyer must be urgently broadened. Law and the lawyer are necessary to the reform of our society. In today's rapidly changing world, where even an imperfect law can permeate every inch of our lives, law reform and a constant vigilance for it must be

coterminous with the very application of the law itself. Indeed, what is so necessary and so lacking now - and therefore of the greatest challenge and opportunity for the legal profession in general and the law schools in particular - is a profession genuinely concerned with the overall structuring of society. Modern societies, said Raymond Aron, are the first ever to justify themselves by their future, the first in which the motto "Man is the future of man" appears not so much blasphemous as banal. If this be so, then the creative frontiers of law and lawyership need not be beyond us; the just society can be a reality in our time. We need no longer ask for whom the bell tolls. It can, and must, toll for all.

C O N T E N T S

EXHIBIT
NO.

DESCRIPTION

1. Covering letter sent out with each questionnaire.
2. Questionnaire mailed to Articling Students
3. Questionnaire mailed to Bar Ad Course Students
4. Questionnaire mailed to Recent Graduates (1967-68-69)
5. Questionnaire mailed to Practitioners (57-66)
6. Questionnaire mailed to Practitioners (67-1969)
7. Questionnaire mailed to Law Professors.
8. Questionnaire mailed to Bar Ad Course Instructors

EXHIBIT I

Suite 203,
505 University Avenue,
Toronto 2, Ontario

June, 1970

RE: LEGAL EDUCATION QUESTIONNAIRE

Dear Sir or Madam:

As the legal profession is a very demanding one, I appreciate that you are very busy. However, as a contribution to the long-term interest of the profession in Ontario, would you please take 15 - 20 minutes out of your day to assist us by completing the enclosed form, and returning it to us as soon as possible? Since you are one of many respondents to this survey across Ontario, your answers will be quite anonymous.

The Commission on Post-Secondary Education in Ontario was set up to advise the Minister of Education and the Minister of University Affairs on all phases of post-secondary education in Ontario up to 1980 and beyond. Our terms of reference include professional education. The attached questionnaire is part of our study on legal education after the LLB.: Articling and the Bar Admission programme. Your assistance in this questionnaire will help us to improve our educational planning for the future.

Yours sincerely,

B. Kymlicka,
Secretary and
Director of Research.

Enc.

EXHIBIT 2, (Colour code - white)

RETURN TO: LEGAL EDUCATION QUESTIONNAIRE
 COMMISSION ON POST SECONDARY EDUCATION IN ONTARIO
 SUITE 203, 505 UNIVERSITY AVENUE
 TORONTO 2, ONTARIO

Please answer every question by checking the appropriate answer or filling in the blank. Should any question not appear to apply to you please indicate "N.A." (for "not applicable"). If one of your answers would seem to need an explanation, feel free to add a brief note beside that answer. (Please ignore the numbers to the right of answer spaces. They are for tabulation purposes only).

Section A

1. May we have some basic information about you and your career. First, what was your year of graduation from law school?

-7

2. From which Law School did you graduate?

Ottawa	() 1-9
Queens	() 2
Toronto	() 3
Western Ontario	() 4
Osgoode Hall/York	() 5
Outside Ontario	() 6
	X

3. Which of the following do you anticipate doing immediately after being admitted to practice:

Practice law as a partner in a law firm	() 1-10
Practice law as an employee of a law firm	() 2
Start my own (one man) legal practice	() 3
Take a position with other than a law firm	() 4

4. If you intend to practice law following completion of your legal education, do you intend to specialize to the extent of 50% or more of your time in any one of the following:

check one only:

criminal law	() 1-14
litigation	() 2
corporate law and taxation	() 3
commercial & real estate	() 4
personal taxation, estates, trusts, wills	() 5
other (please specify) _____	() 6
undecided/don't know	() 7
do not intend to specialize	() 8

Please check your present age:

6. What is your sex?

under 25 () 1-15
 25-26 () 2
 27-29 () 3
 30-34 () 4
 35-39 () 5
 40-49 () 6
 50 or over () 7
 X

male () 1-16
 female () 2

Here we would like some of your views about the legal education system in Ontario, including Law Schools, Articling and the Bar Admission course.

7. Looking at the legal education system in Ontario as a whole, what if anything would you consider to be the most necessary improvements?

8. As you know, two of the three years in the LLB Course in Ontario provide entirely optional choice of subjects. Having regard to the evolving nature of legal practice, which of the following areas would you say are increasing in importance, which are decreasing in importance--in terms of the areas in which a student should seek course exposure.

Check one box for each

	Increasing in Importance	Decreasing Importance
legal theory - jurisprudence.....	() 1	() 2-19
statutes	() 1	() 2-20
case law	() 1	() 2-21
court procedure and documents	() 1	() 2-22
social policy	() 1	() 2-23
practical observation & experience		
(e.g., legal "clinics")	() 1	() 2-24
the lawyer's role in society	() 1	() 2-25
inter-disciplinary teaching (e.g.,		
economics, psychology, finance).....	() 1	() 2-26
techniques of problem-solving.....	() 1	() 2-27
other (please specify)	() 1	() 2-28

excellent good fair poor

()1 ()2 ()3 ()4-37

()1 ()2 ()3 ()4-38

()1 ()2 ()3 ()4 -31

()1 ()2 ()3 ()4-40

()1 ()2 ()3 ()4-41

too short? () 1 45
about right? () 2
too long? () 3

Section C

This final section asks some further background information related to your Articling.

14. Check below the approximate number of lawyers connected with the law firm with whom you are presently Articling.

1	()	1-67
2-4	()	2
5-15	()	3
16-30	()	4
over 30	()	5
		X

15. Indicate below your closest estimate of total expenditure for you and your spouse (if any) on each item listed. For any item not relevant to you, indicate '0'.

i) Item	Total Amount
Tuition Fees	\$ _____
Texts, case books, reports, etc.	\$ _____
Food and shelter	\$ _____
Local transportation	\$ _____
Other (specify)	\$ _____

Did you Article in a locale other than the one you considered your home or permanent place of residence?

- ii) yes () 1 no () 2-70

If yes, indicate in the appropriate space to the right:

- iii) how much you spent in transportation to visit your home city \$ _____

- iv) how much is the amount you estimated above for food and shelter over or under what you would have paid in your home locale \$ _____ over/under
(cross out what does not apply)

16. Please indicate the amount of money you received from each of the following sources during the time you were Articling. For any item not relevant, indicate '0'.

<u>Source</u>	<u>Amount received while Articling</u>
<u>Gifts</u> from parents/relatives/friends (do not include loans here)	\$ _____
<u>Spouse's</u> contribution	\$ _____
<u>Articling</u> salary	\$ _____
<u>Other</u> personal employment <u>income</u>	\$ _____
<u>Savings</u> utilized from prior accumulation	\$ _____
<u>Loans</u> (bank, family, government, other)	\$ _____
<u>Grants</u> , bursaries, awards from government, private firms, or other institutions (except employer)	\$ _____
Other (specify) _____ _____	

- 17a) If you had just obtained your LLB, under which of these three alternative methods would you prefer to be admitted to practice?

- | | <u>Rank in order of preference</u>
<u>i.e., 1, 2, 3</u> |
|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------|
| i) Current educational requirement (LLB + 12 months Articling + 6 months Bar Admission) | () -73 |
| ii) <u>Alternative (a) LLB + immediate Bar Examination.</u> A graduate LLB could, at his option, take a Bar Exam immediately. A satisfactory grade in the exam would mean admission to the Bar, without Articling or Bar Admission course | () -74 |
| iii) <u>Alternative (b) LLB + one year combined Articling and Bar Admission course.</u> Again as an alternative to the present requirement, the graduate LLB could elect to take a one year combined Articling and Bar Admission course, as compared to the present 18 to 21 months total | () -75 |

- 17b) Please state the reasons for your preference.

We would like to thank you for your cooperation in answering this questionnaire. We hope it has been of interest to you, and can assure you that your answers will be most helpful.

Please feel free to use the space below to make any further comments on the subject you may wish.

EXHIBIT 3, (Colour code - tan)

RETURN TO: LEGAL EDUCATION QUESTIONNAIRE
 COMMISSION ON POST-SECONDARY EDUCATION IN ONTARIO
 SUITE 203, 505 UNIVERSITY AVENUE
 TORONTO 2, ONTARIO

Please answer every question by checking the appropriate answer or filling in the blank. Should any question not appear to apply to you please indicate "N.A." (for "not applicable"). If one of your answers would seem to need an explanation, feel free to add a brief note beside that answer. (Please ignore the numbers to the right of answer spaces. They are for tabulation purposes only).

Section A

1. May we have some basic information about you and your career. First, what was your year of graduation from law school?

-7

2. From which Law School did you graduate?

Ottawa	() 1-9
Queens	() 2
Toronto	() 3
Western Ontario	() 4
Osgoode Hall/York	() 5
Outside Ontario	() 6
	X

3. Which of the following do you anticipate doing immediately after being admitted to practice:

Practice law as a partner in a law firm	() 1-10
Practice law as an employee of a law firm	() 2
Start my own (one man) legal practice	() 3
Take a position with other than a law firm	() 4

4. If you intend to practice law following completion of your legal education, do you intend to specialize to the extent of 50% or more of your time in any one of the following:

check one only:

criminal law	() 1-14
litigation	() 2
corporate law and taxation	() 3
commercial & real estate	() 4
personal taxation, estates, trusts, wills	() 5
other (please specify) _____	() 6
undecided/don't know	() 7
do not intend to specialize	() 8

5. Please check your present age: 6. What is your sex:
- | | | | |
|------------|----------|--------|----------|
| under 25 | () 1-15 | male | () 1-16 |
| 25-26 | () 2 | female | () 2 |
| 27-29 | () 3 | | |
| 30-34 | () 4 | | |
| 35-39 | () 5 | | |
| 40-49 | () 6 | | |
| 50 or over | () 7 | | |
| | X | | |

Section B

Here we would like some of your views about the legal education system in Ontario, including Law Schools, Articling and the Bar Admission course.

7. Looking at the legal education system in Ontario as a whole, what if anything would you consider to be the most necessary improvements?

-17

-18

8. As you know, two of the three years in the LLB Course in Ontario provide entirely optional choice of subjects. Having regard to the evolving nature of legal practice, which of the following areas would you say are increasing in importance, which are decreasing in importance--in terms of the areas in which a student should seek course exposure.

Check one box for each			
Increasing in		Decreasing in	
Importance		Importance	
legal theory - jurisprudence.....	() 1	() 2-19	
statutes.....	() 1	() 2-20	
case law.....	() 1	() 2-21	
court procedure and documents.....	() 1	() 2-22	
social policy.....	() 1	() 2-23	
practical observation & experience			
(e.g., legal "clinics").....	() 1	() 2-24	
the lawyer's role in society.....	() 1	() 2-25	
inter-disciplinary teaching (e.g.,			
economics, psychology, finance)	() 1	() 2-26	
techniques of problem-solving.....	() 1	() 2-27	
other (please specify) _____	() 1	() 2-28	

9. Consider for a moment your total professional development to date. If we may assign 10 points to represent that total development, how many would you assign to the contribution made by each of the following?

point value out of 10

your law school training	-29
the period you spent Articling	-30
your Bar Admission course	-31

the period you spent Articling _____ -30

your Bar Admission course -31

Total .10 points

- 10a) Thinking of the period you spent Articling, how would you rate it overall as an educational experience?

Check one: excellent () 1-34
 good () 2
 fair () 3
 poor () 4

good () 2

fair () 3

poor () 4

- 10b) Why do you say that?

-35

11. Please rate as excellent, good, fair or poor each of the following with respect to your Articling period:

excellent good fair poor

The extent to which you
received the breadth of
exposure to legal processes
you wanted ()1 ()2 ()3 ()4-36

Whether it provided an opportunity to specialize in areas of your particular interest ()1 ()2 ()3 ()4-37

The adequacy of time spent
with you by the principal ()1 ()2 ()3 ()4-38

The usefulness of tasks assigned to you in terms of a learning experience ()1 ()2 ()3 ()4-39

The quality and number of seminars and other formalized learning ()1 ()2 ()3 ()4-40

Coverage of the areas
outlined in the Articling
guideline ()1 ()2 ()3 ()4-41

12. How many months did you spend Articling? _____ -42

13. Do you consider this period of time:

too short? () 1-43
about right? () 2
too long? () 3

14a) How would you rate your Bar Admission course as an educational experience?

Check one: excellent () 1-45
good () 2
fair () 3
poor () 4

14b) Why do you say that?

-46

15. Please rate as excellent, good, fair or poor each of the following with respect to your Bar Admission course:

	<u>excellent</u>	<u>good</u>	<u>fair</u>	<u>poor</u>	
the value of the documents,					
notes and similar					
material provided	() 1	() 2	() 3	() 4	4-47
the method of instruction	() 1	() 2	() 3	() 4	4-48
the quality of teaching	() 1	() 2	() 3	() 4	4-49
the system of examination	() 1	() 2	() 3	() 4	4-50

16. Do you consider the Bar Admission course to be:

too short? () 1-51
about right
in length? () 2
too long? () 3

17a) Below is a listing of the current Bar Admission curriculum, indicating the amount of time devoted to each subject.

In the column provided to the right, please indicate whether you believe the amount of emphasis given to each should be maintained, or whether there should be more emphasis or less emphasis.

Opinion regarding emphasis
(check one box for each subject)

<u>Subject</u>	<u>Current Am't of Time</u>	<u>should be more</u>	<u>allright as it is</u>	<u>should be less</u>
Real Estate	3 weeks	()1	()2	()3-53
Civil Procedure	5 weeks	()1	()2	()3-54
Creditor's Rights/ Bankruptcy	2 weeks	()1	()2	()3-55
Corporation and Commercial Law	3 weeks	()1	()2	()3-56
Legal Aid	1 day	()1	()2	()3-57
Professional Conduct	4 days	()1	()2	()3-58
Surrogate Court Practice	1 week	()1	()2	()3-59
Estate Planning	3 weeks	()1	()2	()3-60
Domestic Relations	1 week	()1	()2	()3-61
Criminal Procedure	2 weeks	()1	()2	()3-62
Landlord & Tenant	1 week	()1	()2	()3-63

- 17b) Can you suggest any areas which are not now covered in Bar Admission curriculum which you believe should be added?

If so, what? _____

-64

18. Do you believe the choice of subjects studied in the Bar Admission course should be: (check one)

all mandatory subjects? ()1-65
a combination of mandatory and optional? ()2
all optional subjects? ()3

Section C

X66

This final section asks some further background information related to your Articling and Bar Admission course.

19. Check below the approximate number of lawyers connected with the law firm with whom you Articled (or are presently Articling).

1 ()1-67
2-4 ()2
5-15 ()3
16-30 ()4
over 30 ()5
X

20. Following admission to practice, were you employed any period of time by the same firm with whom you Articled?
 yes ()1 no ()2-68

21. Indicate below your closest estimate of total expenditure for you and your spouse (if any) on each item listed; please do this first for the total period you spent Articling; then for the total period you spent in the Bar Admission course. For any item not relevant to you, indicate "0".

	a) <u>Articling</u>	b) <u>Bar Ad. Course</u>
i) Number of months spent in each _____	_____	_____ month
ii) Item		
Tuition fee	\$ _____	\$ _____
Texts, case books, reports, etc.	\$ _____	\$ _____
Food and shelter	\$ _____	\$ _____
Local transportation	\$ _____	\$ _____
Other (specify) _____	\$ _____	\$ _____
	\$ _____	\$ _____

Did you spend either of these two periods in a locale other than the one you considered your home or permanent place of residence?

iii) yes ()1-70 ()1-72
 no ()2 ()2

If yes to either, indicate in the appropriate space to the right:

iv) how much you spent in transportation to visit your home city \$ _____ \$ _____

v) how much is the amount you estimated above for food and shelter over or under what you would have paid in your home locale
 \$ _____ over/ \$ _____ over/
 _____ under _____ under
 (cross out what does not apply)

22. Please indicate the total amount of money you received from each of the following sources during the time you were Articling and the time you spent taking the Bar Admission course. For any item not relevant, indicate '0'.

Amount received while:

<u>Source</u>	a) <u>Articling</u>	b) <u>Taking Bar Ad.</u>
<u>Gifts from parents/relatives/</u> <u>friends (do not include loans</u> <u>here)</u>	\$ _____	\$ _____
<u>Spouse's contribution</u>	\$ _____	\$ _____
<u>Articling salary: include under</u> <u>Bar Ad. any remuneration received</u> <u>from a legal firm while in the</u> <u>Bar Ad. course</u>	\$ _____	\$ _____
<u>Other personal employment income</u>	\$ _____	\$ _____
<u>Savings utilized from prior</u> <u>accumulation</u>		
<u>Loans (bank, family, government,</u> <u>other)</u>	\$ _____	\$ _____
<u>Grants, bursaries, awards from</u> <u>government, private firms, or</u> <u>other institutions (except</u> <u>employer)</u>	\$ _____	\$ _____
<u>Other (specify) _____</u>	\$ _____	\$ _____
_____	\$ _____	\$ _____

- 23a) If you had just obtained your LLB, under which of these three alternative methods would you prefer to be admitted to practice?

Rank in order of preference
i.e., 1, 2, 3

- i) Current educational requirement (LLB + 12
months Articling + 6 months Bar Admission) ()-73
- ii) Alternative (a) LLB + immediate Bar
Examination. A graduate LLB could, at his
option, take a Bar Exam immediately. A
satisfactory grade in the exam would mean
admission to the Bar, without Articling or
Bar Admission course ()-74
- iii) Alternative (b) LLB + one year combined
Articling and Bar Admission course. Again
as an alternative to the present requirement,
the graduate LLB could elect to take a one
year combined Articling and Bar Admission
course, as compared to the present 18 to 21
months total ()-75

b) Please state the reasons for your preference.

-76

We would like to thank you for your cooperation in answering this questionnaire. We hope it has been of interest to you, and can assure you that your answers will be most helpful.

Please feel free to use the space below to make any further comments on the subject you may wish.

RETURN TO: LEGAL EDUCATION QUESTIONNAIRE
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 SUITE 203, 505 UNIVERSITY AVENUE
 TORONTO 2, ONTARIO

Please answer every question by checking the appropriate answer or filling in the blank. Should any question not appear to apply to you please indicate "N.A." (for "not applicable"). If one of your answers would seem to need an explanation, feel free to add a brief note beside that answer. (Please ignore the numbers to the right of answer spaces. They are for tabulation purposes only).

Section A

1. May we have some basic information about you and your career.

a) First, in what year did you graduate from law school? -7

b) And in what year did you start to practice law? _____ -8

2. From which law school did you graduate?

Ottawa	() 1-9
Queens	() 2
Toronto	() 3
Western Ontario	() 4
Windsor	() 5
Osgoode Hall/York	() 6
Outside Ontario	() 7
	X

3a) Which of the following did you do immediately following your start of practice; which are you now doing?

	i) Immediately After Start of Practice (check one)	ii) At This Time (check one)
Practicing law as a senior partner in a law firm	() 1-10	() 1-11
Practicing law as a junior partner in a law firm	() 2	() 2
Practicing law as an employee of a law firm	() 3	() 3
My own (one man) legal practice	() 4	() 4
A position with other than a law firm	() 5	() 5

b) If not currently, or at the start of your career, have you ever had your own (one man) legal practice?

yes () 1-12 no () 2-12

- c) If you are a partner or employed in a law firm; how many lawyers (i.e., excluding students) are on the staff of the law firm with whom you are now associated?

1	()	1-13
2-4	()	2
5-15	()	3
16-30	()	4
over 30	()	5

4. If you are now practicing law, are you:

Specializing to the extent of 50% or more of your time in any one of the following:

(check one only)

criminal law	()	1-14
litigation	()	2
corporate law and taxation	()	3
commercial and real estate	()	4
personal taxation, estates, trusts, wills	()	5
other (please specify) _____	()	6
_____	()	7

OR A general practitioner

() 8

5. Please check your present age.

6. What is your sex,

under 25	()	1-15
25-26	()	2
27-29	()	3
30-34	()	4
35-39	()	5
40-49	()	6
50 or over	()	7
		X

male	()	1-16
female	()	2

Section B

Here we would like some of your views about legal education in Ontario--that is, the LLB, Articling, the Bar Admission course.

7. Looking at the legal education system in Ontario as a whole, what if anything would you consider to be the most necessary improvements?

-17

-18

8. As you know, two of the three years in the LLB Course in Ontario provide entirely optional choice of subjects. Having regard to the evolving nature of legal practice, which of the following areas would you say are increasing in importance, which are decreasing in importance--in terms of the areas in which a student should seek course exposure.

Check one box for each

	<u>Increasing in Importance</u>	<u>Decreasing in Importance</u>
legal theory - jurisprudence.....	()1	()2-19
statutes.....	()1	()2-20
case law.....	()1	()2-21
court procedure and documents.....	()1	()2-22
social policy.....	()1	()2-23
practical observation & experience (e.g., legal "clinics").....	()1	()2-24
the lawyer's role in society.....	()1	()2-25
inter-disciplinary teaching (e.g., economics, psychology, finance).. <td>()1</td> <td>()2-26</td>	()1	()2-26
techniques of problem-solving.....	()1	()2-27
Other (please specify)_____	()1	()2-28

9. Consider for a moment your total professional development to date. If we may assign 10 points to represent that total development, how many would you assign to the contribution made by each of the following?

point value out of 10

your law school training	_____	-29
the period you spent Articling	_____	-30
your Bar Admission course	_____	-31
your first two years as a practitioner	_____	-32
Total	_____	10 points

- 10a) Thinking of the period you spent Articling, how would you rate it overall as an educational experience?

check one: excellent ()1-34
 good ()2
 fair ()3
 poor ()4

- b) Why do you say that?

11. Please rate as excellent, good, fair or poor each of the following with respect to your Articling period:

excellent good fair poor

The extent to which you received the breadth of exposure to legal processes you wanted ()1 ()2 ()3 ()4-36

Whether it provided an opportunity to specialize in areas of your particular interest ()1 ()2 ()3 ()4-37

The adequacy of time spent with you by the principal ()1 ()2 ()3 ()4-38

The usefulness of tasks assigned to you in terms of a learning experience ()1 ()2 ()3 ()4-39

The quality and number of seminars and other formalized learning ()1 ()2 ()3 ()4-40

Coverage of the areas outlined in the Articling guideline ()1 ()2 ()3 ()4-41

12. How many months did you spend Articling? _____ -42

13. Do you consider this period of time:

too short? ()1-43
about right? ()2
too long? ()3

- 14a) How would you rate your Bar Admission course as an educational experience?

check one: excellent ()1-45
 good ()2
 fair ()3
 poor ()4

- b) Why do you say that?

15. Please rate as excellent, good, fair or poor each of the following with respect to your Bar Admission course:

	<u>excellent</u>	<u>good</u>	<u>fair</u>	<u>poor</u>
the value of the documents, notes and similar material provided	()1	()2	()3	()4-47
the method of instruction	()1	()2	()3	()4-48
the quality of teaching	()1	()2	()3	()4-49
the system of examination	()1	()2	()3	()4-50

16. Do you consider the Bar Admission course to be:

too short?	()1-51
about right in length?	()2
too long?	()3

17. Can you suggest any areas which are not now covered in the Bar Admission curriculum which you believe should be added?

If so, what _____

18. Do you believe the choice of subjects studied in the Bar Admission course should be: (check one)

all mandatory subjects?	()1-55
a combination of mandatory and optional?	()2
all optional subjects?	()3

X66

Section C

This final section asks some further background information related to your Articling and Bar Admission course.

19. Check below the approximate number of lawyers connected with the law firm with whom you Articled.

1	()1-67
2-4	()2
5-15	()3
16-30	()4
over 30	()5
	X

20. Following admission to practice, were you employed for any period of time by the same firm with whom you Articled?

yes	()1	no	()2-68
-----	------	----	---------

21. Indicate below your closest estimate of total expenditure for you and your spouse (if any) on each item listed; please do this first for the total period you spent Articling; then for the total period you spent in the Bar Admission course. For any item not relevant to you, indicate '0'.

a) Articling b) Bar, Ad. Course

i) Number of months spent in each _____ -69 _____ -71

ii) Item

Tuition fee \$ _____ \$ _____

Texts, case books, reports, etc.	\$	\$
-------------------------------------	----	----

Food and shelter	\$		\$	
------------------	----	--	----	--

Local transportation	\$	\$
----------------------	----	----

Other (specify) \$ _____ \$ _____

\$ _____ \$ _____

Did you spend either of these two periods in a locale other than the one you considered your home or permanent place of residence?

iii) permanent place of residence:

yes	() 1-70	() 1-72
no	() 2	() 2

If yes to either, indicate in the appropriate space to the right:

iv) How much you spent in transportation to visit your home city \$ _____ \$ _____

v) How much is the amount you
estimated above for food and
shelter over or under what you
would have paid in your home
locale \$ _____ over/ \$ _____ over/
under under
(cross out what does not apply)

22. Please indicate the total amount of money you received from each of the following sources during the time you were Articling and the time you spent taking the Bar Admission course. For any item not relevant, indicate '0'.

Amount received while:

a) Articling b) Taking Bar Ad

Source

Gifts from parents/relatives/
friends (do not include loans
here) \$ \$

Spouse's contribution \$ _____ \$ _____

(cont'd)

Articling salary; include under
Bar Ad any remuneration
received from a legal firm
while in the Bar Ad course \$ _____ \$ _____

Other personal employment
income \$ _____ \$ _____

Savings utilized from prior
accumulation \$ _____ \$ _____

Loans (bank, family, govern-
ment, other) \$ _____ \$ _____

Grants, bursaries, awards from
government, private firms,
or other institutions
(except employer) \$ _____ \$ _____

Other (specify) _____ \$ _____ \$ _____
_____ \$ _____ \$ _____

23a) If you had just obtained your LLB, under which of these three alternative methods would you prefer to be admitted to practice?

Rank in order of preference
i.e., 1, 2, 3

- i) Current educational requirement (LLB + 12 months Articling + 6 months Bar Admission) ()-73
- ii) Alternative (a) LLB + immediate Bar Examination. A graduate LLB could, at his option, take a Bar Exam immediately. A satisfactory grade in the exam would mean admission to the Bar, without Articling or Bar Admission course ()-74
- iii) Alternative (b) LLB + one year combined Articling and Bar Admission course. Again as an alternative to the present requirement, the graduate LLB could elect to take a one year combined Articling and Bar Admission course, as compared to the present 18 to 21 months total ()-75
- b) Please state the reasons for your preference.

We would like to thank you for your cooperation in answering this questionnaire. We hope it has been of interest to you, and can assure you that your answers will be most helpful.

Please feel free to use the space below to make any further comments on the subject you may wish.

EXHIBIT 5, (Colour code - orange)

RETURN TO: LEGAL EDUCATION QUESTIONNAIRE
 COMMISSION ON POST-SECONDARY EDUCATION IN ONTARIO
 SUITE 203, 505 UNIVERSITY AVENUE
 TORONTO 2, ONTARIO

Please answer every question by checking the appropriate answer or filling in the blank. Should any question not appear to apply to you please indicate "N.A." (for "not applicable"). If one of your answers would seem to need an explanation, feel free to add a brief note beside that answer. (Please ignore the numbers to the right of answer spaces. They are for tabulation purposes only).

Section A

1. May we have some basic information about you and your career.

a) First, in what year did you graduate from law school? _____-7

b) And in what year did you start to practice law? _____-8

2. From which law school did you graduate?

Ottawa	() 1-9
Queens	() 2
Toronto	() 3
Western Ontario	() 4
Windsor	() 5
Osgoode Hall/York	() 6
Outside Ontario	() 7
	X

3a) Which of the following did you do immediately following your start of practice; which are you now doing?

	i) Immediately After Start of Practice (check one)	ii) At This Time (check one)
Practicing law as a senior partner in a law firm	() 1-10	() 1-11
Practicing law as a junior partner in a law firm	() 2	() 2
Practicing law as an employee of a law firm	() 3	() 3
My own (one man) legal practice	() 4	() 4
A position with other than a law firm	() 5	() 5

- b) If not currently, or at the start of your career, have you ever had your own (one man) legal practice?

yes () 1-12

no () 2-12

- c) If you are a partner or employed in a law firm, how many lawyers (i.e., excluding students) are on the staff of the law firm with whom you are now associated?

1 () 1-13

2-4 () 2

5-15 () 3

16-30 () 4

over 30 () 5

4. If you are now practicing law, are you:

Specializing to the extent of 50% or more of your time in any one of the following:

(check one only)

criminal law () 1-14

litigation () 2

corporate law and taxation () 3

commercial and real estate () 4

personal taxation, estates, trusts, wills () 5

other (please specify) _____ () 6

() 7

OR A general practitioner

() 8

5. Please check your present age.

6. What is your sex?

under 25 () 1-15

25-26 () 2

27-29 () 3

30-34 () 4

35-39 () 5

40-49 () 6

50 or over () 7

X

male () 1-16

female () 2

Section B

Here we would like some of your views about legal education in Ontario--that is, the LLB, Articling, the Bar Admission Course.

7. Looking at the legal education system in Ontario as a whole, what if anything would you consider to be the most necessary improvements?

8. As you know, two of the three years in the LLB Course in Ontario provide entirely optional choice of subjects. Having regard to the evolving nature of legal practice, which of the following areas would you say are increasing in importance, which are decreasing in importance--in terms of the areas in which a student should seek course exposure.

Check one box for each

	Increasing in importance	Decreasing in Importance
legal theory - jurisprudence.....	()1	()2-19
statutes.....	()1	()2-20
case law.....	()1	()2-21
court procedure and documents.....	()1	()2-22
social policy.....	()1	()2-23
practical observation & experience (e.g., legal "clinics").....	()1	()2-24
the lawyer's role in society.....	()1	()2-25
inter-disciplinary teaching (e.g., economics, psychology, finance)...	()1	()2-26
techniques of problem-solving.....	()1	()2-27
other (please specify)_____	()1	()2-28

9. Consider for a moment your total professional development to date. If we may assign 10 points to represent that total development, how many would you assign to the contribution made by each of the following.

point value out of 10

your law school training	_____	-29
the period you spent Articling	_____	-30
your Bar Admission course	_____	-31
your first two years as a practitioner	_____	-32
Total	10 points	-33

- 10a) Thinking of the period you spent Articling, how would you rate it overall as an educational experience?

check one:	excellent	()1-34
	good	()2
	fair	()3
	poor	()4

- b) Why do you say that?

11. Please rate as excellent, good, fair or poor each of the following with respect to your Articling period:

excellent good fair poor

The extent to which you received the breadth of exposure to legal processes you wanted () 1 () 2 () 3 () 4

Whether it provided an opportunity to specialize in areas of your particular interest () 1 () 2 () 3 () 4

The adequacy of time spent with you by the principal () 1 () 2 () 3 () 4

The usefulness of tasks assigned to you in terms of a learning experience () 1 () 2 () 3 () 4

The quality and number of seminars and other formalized learning () 1 () 2 () 3 () 4

Coverage of the areas outlined in the Articling guideline () 1 () 2 () 3 () 4

12. How many months did you spend Articling? _____

13. Do you consider this period of time:

too short? () 1-43
about right? () 2
too long? () 3

- 14a) How would you rate your Bar Admission course as an educational experience?

Check one: excellent () 1-45
 good () 2
 fair () 3
 poor () 4

- b) Why do you say that?

15. Please rate as excellent, good, fair or poor each of the following with respect to your Bar Admission course:

excellent good fair poor

the value of the documents, notes and similar material provided	() 1	() 2	() 3	() 4-47
the method of instruction	() 1	() 2	() 3	() 4-48
the quality of teaching	() 1	() 2	() 3	() 4-49
the system of examination	() 1	() 2	() 3	() 4-50

16. Do you consider the Bar Admission course to be:

too short	() 1-51
about right in length?	() 2
too long?	() 3

Section C

X66

This final section asks some further background information related to your Articling and Bar Admission course.

17. Check below the approximate number of lawyers connected with the law firm with whom you Articled.

1	() 1-67
2-4	() 2
5-15	() 3
16-30	() 4
over 30	() 5

18. Following admission to practice, were you employed for any period of time by the same firm with whom you Articled?

yes () 1	no () 2-68
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19. We would like your own best judgment as to the average salary for all legal practitioners at three points in their career; that is, the average salary at start of practice, after two years of practice, and after five years.

We are also going to ask you to consider your answers under three different situations. The first represents the actual current educational requirements, the other two describe possible alternative educational qualifications for practice which have been suggested at various times. Those latter two are, of course, hypothetical at this point; nevertheless, in giving your best estimate under each condition, please assume that a significant number of candidates, say 10% to 20% at least, did in fact take the option as described, as an alternative to the present requirement.

- | | Average
Starting
Salary
per annum | Average
After
2 years
per annum | Average
After
5 years
per annum |
|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------|------------------------------------------|------------------------------------------|
| i) <u>Current educational requirement</u>
(LLB + 12 months Articling + 6
months Bar Admission) | \$ _____ | \$ _____ | \$ _____ |
| ii) <u>Alternative (a) LLB + immediate</u>
<u>Bar Examination.</u> A graduate
LLB could, at his option, take
a Bar Exam immediately. A
satisfactory grade in the exam
would mean admission to the
Bar, without Articling or Bar
Admission course | \$ _____ | \$ _____ | \$ _____ |
| iii) <u>Alternative (b) LLB + one year</u>
<u>combined Articling and Bar</u>
<u>Admission Course.</u> Again as an
alternative to the present
requirement, the graduate LLB
could elect to take a one year
combined Articling and Bar
Admission course, as compared
to the present 18 to 21 months
total | \$ _____ | \$ _____ | \$ _____ |
| 20a) If you had just obtained your LLB, under which of the three
alternatives would you prefer to be admitted to practice? | | | |

Rank in order of preference
(i.e., 1, 2, 3)

Current requirement	() 1-77
LLB + immediate Bar Examination	() 2
One year combined Articling and Bar Admission course	() 3

- b) Please state the reason for your preferences.

21. Please check in which income group you belong, based on total annual income for 1969 from salary and any distribution of firm earnings for law practice only. (Note: if self-employed, indicate income bracket after deduction of expenses for the purpose of gaining income)

under \$10,000	() 1-79
\$10,000 to \$14,999	() 2
\$15,000 to \$19,999	() 3
\$20,000 to \$29,999	() 4
\$30,000 to \$39,999	() 5
\$40,000 or over	() 6
	X

We would like to thank you for your cooperation in answering this questionnaire. We hope it has been of interest to you, and can assure you that your answers will be most helpful.

Please feel free to use the space below to make any further comments on the subject you may wish.

EXHIBIT 6, (Colour code - green)

RETURN TO: LEGAL EDUCATION QUESTIONNAIRE
 COMMISSION ON POST-SECONDARY EDUCATION IN ONTARIO
 SUITE 203, 505 UNIVERSITY AVENUE
 TORONTO 2, ONTARIO

Please answer every question by checking the appropriate answer or filling in the blank. Should any question not appear to apply to you please indicate "N.A." (for "not applicable:"). If one of your answers would seem to need an explanation, feel free to add a brief note beside that answer. (Please ignore the numbers to the right of answer spaces. They are for tabulation purposes only).

Section A

1. May we have some basic information about you and your career.

- a) First, in what year did you graduate from law school? _____ -
 b) And in what year did you start to practice law? _____ -

2. From which law school did you graduate?

Ottawa () 1-9
 Queens () 2
 Toronto () 3
 Western Ontario () 4
 Windsor () 5
 Osgoode Hall/York () 6
 Outside Ontario () 7
 X

3a) Which of the following did you do immediately following your start of practice; which are you now doing?

	i) Immediately After Start of Practice (check one)	ii) At This Time (check one)
Practicing law as a senior partner in a law firm	() 1-10	() 1-11
Practicing law as a junior partner in a law firm	() 2	() 2
Practicing law as an employee of a law firm	() 3	() 3
My own (one man) legal practice	() 4	() 4
A position with other than a law firm	() 5	() 5

- b) If not currently, or at the start of your career, have you ever had your own (one man) legal practice?

yes () 1-12 no () 2-12

- c) If you are a partner or employed in a law firm, how many lawyers (i.e., excluding students) are on the staff of the law firm with whom you are now associated?

1 () 1-13

2-4 () 2

5-15 () 3

16-30 () 4

over 30 ()5

4. If you are now practicing law, are you:

Specializing to the extent of 50% or more of your time in any one of the following: (check one only)

criminal law ()1-14

litigation () 2

corporate law and taxation	()3
----------------------------	------

commercial and real estate ()4

personal taxation, estates, trusts, ()5

wills

other (please specify) ()6

()7

OR A general practitioner ()8

5. Please check your present age. 6. What is your sex?

under 25 ()1-15

male ()1-16

25-26 () 2

female () 2

27-29 () 3

30-34 () 4

35-39 () 5

40-49 () 6

50 or over () 7

Section B

Here we would like some of your views about legal education in Ontario--that is, the LLB, Articling, the Bar Admission Course.

7. Looking at the legal education system in Ontario as a whole, what if anything would you consider to be the most necessary improvements?

-17

-18

8. As you know, two of the three years in the LLB Course in Ontario provide entirely optional choice of subjects. Having regard to the evolving nature of legal practice, which of the following areas would you say are increasing in importance, which are decreasing in importance-- in terms of the areas in which a student should seek course exposure.

Check one box for each			
	Increasing in	Decreasing in	
	Importance	Importance	
legal theory - jurisprudence...	()1	()2-19	
statutes.....	()1	()2-20	
case law.....	()1	()2-21	
court procedure and documents..	()1	()2-22	
social policy.....	()1	()2-23	
practical observation & experience (e.g., legal "clinics").....	()1	()2-24	
the lawyer's role in society...	()1	()2-25	
inter-disciplinary teaching (e.g., economics, psychology, finance).....	()1	()2-26	
techniques of problem-solving..	()1	()2-27	
Other (please specify)_____	()1	()2-28	

- 9a) The current period required for Articling is 12 to 15 months. Do you consider this period of time:

too short? ()1-43
about right? ()2
too long? ()3

- b) Why do you say that?

-44

- 10a) The current Bar Admission course requires 6 months to complete. Do you consider this length of time:

too short? ()1-45
about right in
length? ()2
too long? ()3

b) Why do you say that?

-46

X66

Section C

This final section asks some further background information related to your Articling and Bar Admission course.

11. We would like your own best judgment as to the average salary for all legal practitioners at three points in their career; that is, the average salary at start of practice, after two years of practice and after five years.

We are also going to ask you to consider your answers under three different situations. The first represents the actual current educational requirements, the other two describe possible alternative educational qualifications for practice which have been suggested at various times. These latter two are, of course, hypothetical at this point; nevertheless, in giving your best estimate under each condition, please assume that a significant number of candidates, say 10% to 20% at least, did in fact take the option as described, as an alternative to the present requirement.

	Average Starting Salary per annum	Average After 2 Years per annum	Average After 5 Years per annum
i) <u>Current educational requirement</u> (LLB + 12 months Articling + 6 months Bar Admission)	\$ _____	\$ _____	\$ _____
ii) <u>Alternative (a) LLB + immediate Bar Examination.</u> A graduate LLB could, at his option, take a Bar Exam immediately. A satisfactory grade in the exam would mean admission to the Bar, without Articling or Bar Admission course	\$ _____	\$ _____	\$ _____

- iii) Alternative (b) LLB + one year combined Articling and Bar Admission course. Again as an alternative to the present requirement, the graduate LLB could elect to take a one year combined Articling and Bar Admission course, as compared to the present 18 to 21 months.

total \$ _____ \$ _____ \$ _____

- 12a) If you had just obtained your LLB, under which of the three alternatives would you prefer to be admitted to practice?

Rank in order of preference
(i.e., 1, 2, 3)

Current requirement	() 1-77
LLB + immediate Bar Examination	() 2
One year combined Articling and Bar Admission course	() 3

- b) Please state the reason for your preference .

13. Please check in which income group you belong, based on total annual income for 1969 from salary and any distribution of firm earnings for law practice only. (Note: if self-employed, indicate income bracket after deduction of expenses for the purpose of gaining income).

under \$10,000	() 1-79
\$10,000 to \$14,999	() 2
\$15,000 to \$19,999	() 3
\$20,000 to \$29,999	() 4
\$30,000 to \$39,999	() 5
\$40,000 or over	() 6
	X

We would like to thank you for your cooperation in answering this questionnaire. We hope it has been of interest to you, and can assure you that your answers will be most helpful.

Please feel free to use the space below to make any further comments on the subject you may wish.

EXHIBIT 7, (Colour code - pink)

RETURN TO: LEGAL EDUCATION QUESTIONNAIRE
 COMMISSION ON POST SECONDARY EDUCATION IN ONTARIO
 SUITE 203, 505 UNIVERSITY AVENUE
 TORONTO 2, ONTARIO

Please answer every question by checking the appropriate answer or filling in the blank. Should any question not appear to apply to you please indicate "N.A." (for "not applicable"). If one of your answers would seem to need an explanation, feel free to add a brief note beside that answer.

Section A

1. May we have some basic information about you and your career.

First, in what year did you graduate from the last Law School you attended? _____

2. Where is the Law School you last attended (as a student)?

In Ontario ()
 In another province of Canada ()
 In the United States ()
 Other than Canada or U.S. ()

3. Please list all degrees you hold, excluding honorary degrees, together with the field of study for each.

<u>degree</u>	<u>field of study</u>
_____	_____
_____	_____
_____	_____
_____	_____

4. At what Law School do you teach?

Ottawa ()
 Queens ()
 Toronto ()
 Western Ontario ()
 Windsor ()
 Osgoode Hall/York ()

5. What subject or subjects do you currently teach?

149

6. How many years have you been teaching law:

at a University in Ontario? _____

at a University outside of Ontario? _____

Total years teaching law _____

7a) Do you presently carry on an outside legal practice?

yes () no ()

b) If you are not now practicing, have you ever carried on an outside legal practice?

yes () no ()

Please indicate below whether you:

8a) Articled? yes () no ()

b) If yes was that: in Ontario ()
elsewhere ()

9a) Are a member of any Bar?

yes () no ()

b) If yes is that: the Ontario Bar ()
a Bar elsewhere ()

10a) Took a Bar Admission Course?

yes () no ()

b) If yes was that: in Ontario ()
elsewhere ()

Section B

Here we would like some of your views about legal education in Ontario; that is the LLB, Articling and Bar Admission course.

11. Looking at the legal education system in Ontario as a whole, what if anything would you consider to be the most necessary improvements?

12. As you know, two of the three years in the LLB Course in Ontario provide entirely optional choice of subjects. Having regard to the evolving nature of legal practice, which of the following areas would you say are increasing in importance, which are decreasing in importance--in terms of the areas in which the student should seek course exposure.

Check one box for each

	<u>Increasing in</u> <u>Importance</u>	<u>Decreasing in</u> <u>Importance</u>
legal theory-jurisprudence.....()	()	()
statutes.....()	()	()
case law.....()	()	()
court procedure and documents....()	()	()
social policy.....()	()	()
practical observation & experience (e.g., legal "clinics").....()	()	()
the lawyer's role in society.....()	()	()
inter-disciplinary teaching (e.g., economics, psychology, finance).....()	()	()
techniques of problem-solving....()	()	()

Other (please specify)

_____	()	()
_____	()	()

13. Please indicate below any changes or improvements you believe should be made in each of the following:

a) The LLB course _____

b) the process of Articling _____

c) the Bar Admission course _____

14a) Below is a listing of the current Bar Admission curriculum, indicating the amount of time devoted to each subject.

In the column provided to the right, please indicate whether you believe the amount of emphasis given to each should be maintained, or whether there should be more emphasis or less emphasis.

Opinion regarding emphasis
 (check one box for each subject)

<u>Subject</u>	<u>Current Am't of Time</u>	<u>should be more</u>	<u>allright as it is</u>	<u>should be less</u>
Real Estate	3 weeks	()	()	()
Civil Procedure	5 weeks	()	()	()
Creditor's Rights/ Bankruptcy	2 weeks	()	()	()
Corporation and Commercial Law	3 weeks	()	()	()

Legal Aid	3 weeks	()	()	()
Professional Conduct	4 days	()	()	()
Surrogate Court Practice	1 week	()	()	()
Estate Planning	3 weeks	()	()	()
Domestic Relations	1 week	()	()	()
Criminal Procedure	2 weeks	()	()	()
Landlord & Tenant	1 week	()	()	()

- b) Can you suggest any areas which are not now covered in the Bar Admission curriculum which you believe should be added?

If so, what _____

15. Do you believe the choice of subjects studied in the Bar Admission course should be:

(Check one)

- all mandatory subjects? ()
a combination of mandatory and optional? ()
all optional subjects? ()

- 16a) If you had just obtained your LLB, under which of these three alternative methods would you prefer to be admitted to practice

Rank in order of preference
i.e., 1, 2, 3

- i) Current educational requirement (LLB + 12 months Articling + 6 months Bar Admission) ()

- ii) Alternative (a) LLB + immediate Bar Examination. A graduate LLB could, at his option, take a Bar Exam immediately. A satisfactory grade in the exam would mean admission to the Bar, without Articling or Bar Admission course ()

- iii) Alternative (b) LLB one year combined Articling and Bar Admission course. Again as an alternative to the present requirement, the graduate LLB could elect to take a one year combined Articling and Bar Admission course, as compared to the present 18 to 21 months total ()

16b) Please state the reasons for your preference.

Section C

Just two final questions.

- | | |
|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------|
| <p>17. Please check your present age:</p> <p>under 25 ()</p> <p>25-26 ()</p> <p>27-29 ()</p> <p>30-34 ()</p> <p>35-39 ()</p> <p>40-49 ()</p> <p>50 or over ()</p> | <p>18. What is your sex?</p> <p>male ()</p> <p>female ()</p> |
|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------|

We would like to thank you for your cooperation in answering this questionnaire. We hope it has been of interest to you, and can assure you that your answers will be most helpful.

Please feel free to use the space below to make any further comments on the subject you may wish.

EXHIBIT 8, (Colour code - yellow)

RETURN TO: LEGAL EDUCATION QUESTIONNAIRE
 COMMISSION ON POST SECONDARY EDUCATION IN ONTARIO
 SUITE 203, 505 UNIVERSITY AVENUE
 TORONTO 2, ONTARIO

Please answer every question by checking the appropriate answer or filling in the blank. Should any question not appear to apply to you please indicate "N.A." (for "not applicable"). If one of your answers would seem to need an explanation, feel free to add a brief note beside that answer.

Section A

1. May we have some basic information about you and your career.

a) First, in what year did you graduate from Law School? _____

b) And in what year did you start to practice law?

2. Where is the Law School you last attended?

In Ontario	()
In another province of Canada	()
In the United States	()
Other than Canada or U.S.	()

3. What subject or subjects are you currently teaching in the Bar Admission course?

4. How long have you been teaching in the Bar Admission course?

1-2 years	()
3-5 years	()
6-10 years	()
over 10 years	()

Section B

Here we would like some of your views about legal education in Ontario, that is, the LLB, Articling and Bar Admission course.

5. Looking at the legal education system in Ontario as a whole, what if anything would you consider to be the most necessary improvements?

6. As you know, two of the three years in the LLB Course in Ontario provide entirely optional choice of subjects. Having regard to the evolving nature of legal practice, which of the following areas would you say are increasing in importance, which are decreasing in importance--in terms of the areas in which a student should seek course exposure.

Check one box for each

	<u>Increasing in</u> <u>Importance</u>	<u>Decreasing in</u> <u>Importance</u>
legal theory - jurisprudence...	()	()
statutes.....	()	()
case law.....	()	()
court procedure and documents..	()	()
social policy.....	()	()
practical observation & experience (e.g., legal "clinics").....	()	()
the lawyer's role in society...	()	()
inter-disciplinary teaching (e.g., economics, psychology, finance).....	()	()
techniques of problem-solving	()	()
Other (please specify)		
_____	()	()
_____	()	()

7. Please indicate below any changes or improvements you believe should be made in each of the following:

a) The LLB course _____

b) the process of Articling _____

c) the Bar Admission course _____

8a) Below is a listing of the current Bar Admission curriculum, indicating the amount of time devoted to each subject.

In the column provided to the right, please indicate whether you believe the amount of emphasis given to each should be maintained, or whether there should be more emphasis or less emphasis.

Opinion regarding emphasis
(check one box for each subject)

<u>Subject</u>	<u>Current Am't of Time</u>	<u>should be more</u>	<u>allright as it is</u>	<u>should be less</u>
Real Estate	3 weeks	()	()	()
Civil Procedure	5 weeks	()	()	()
Creditor's Rights/ Bankruptcy	2 weeks	()	()	()
Corporation and Commercial Law	3 weeks	()	()	()
Legal Aid	1 day	()	()	()
Professional Conduct	4 days	()	()	()
Surrogate Court Practice	1 week	()	()	()
Estate Planning	3 weeks	()	()	()
Domestic Relations	1 week	()	()	()
Criminal Procedure	2 weeks	()	()	()
Landlord & Tenant	1 week	()	()	()

- b) Can you suggest any areas which are not now covered in the Bar Admission curriculum which you believe should be added?

If so, what _____

9. Do you believe the choice of subjects studied in the Bar Admission course should be:

(check one)

all mandatory subjects? ()

a combination of mandatory and optional? ()

all optional subjects? ()

- 10a) If you had just obtained your LLB, under which of these three alternative methods would you prefer to be admitted to practice?

Rank in order of preference
i.e., 1, 2, 3

- i) Current educational requirement (LLB + 12 months Articling + 6 months Bar Admission) ()
- ii) Alternative (a) LLB + immediate Bar Examination. A graduate LLB could, at his option, take a Bar Exam immediately. A satisfactory grade in the exam would mean admission to the Bar, without Articling or Bar Admission course ()
- iii) Alternative (b) LLB + one year combined Articling and Bar Admission course. Again as an alternative to the present requirement, the graduate LLB could elect to take a one year combined Articling and Bar Admission course, as compared to the present 18 to 21 months total ()
- 10b) Please state the reasons for your preference.

Section C

Just a few final questions.

11. Check below the approximate number of lawyers connected with the law firm with which you are associated.

1	()
2-4	()
5-15	()
16-30	()
over 30	()

12. What percentage of your total annual working time do you spend teaching the Bar Admission course? (check one)

under 5% ()
5-10% ()
10-20% ()
over 20% ()

13. Depending on the subject involved, it may or may not be necessary to periodically revise the course you teach. About how long ago did you find it necessary to substantially revise any one or more of your courses in the Bar Admission--say to the extent of 25% or more?

14. Please check your present age. 15. What is your sex?

under 25 ()
25-26 ()
27-29 ()
30-34 ()
35-39 ()
40-49 ()
50 or over ()

male ()
female ()

We would like to thank you for your cooperation in answering this questionnaire. We hope it has been of interest to you, and can assure you that your answers will be most helpful.

Please feel free to use the space below to make any further comments on the subject you may wish.
